TOLLEY®GUIDANCE

SIMON GROOM
Director of Tax Content Transformation, Tolley

During a 33 year career, mainly spent in training students for the ATT and CTA examinations, Simon has played a small role in starting the careers of many a tax professional, and during the last 11 years at Tolley he has spent most of that time leading the Tax Examinations business. He is now leading the transformation of the Tolley content to optimise it for online use, a role which means his appearances in the classroom are few and far between, but are probably more enjoyable for it.

During his career he spent time as a student at Arthur Young (now part of EY) where he qualified as a Chartered Accountant, and Financial Training (now Kaplan) where he discovered a love of all things tax, which made studying and passing the ATII (now CTA) exams that little bit easier. He returned to EY in 2000, to work in their National Tax Training Team, and whilst there became a member of Council of the Association of Taxation Technicians (ATT), following many years of lecturing for them on student conferences, and as a volunteer on various committees. Re-reading this paragraph and seeing all the name changes makes the 33 year career seem even longer!

Whilst at the ATT he played a role in developing the examination structure and is now a member of their Member Steering Group, and Business Steering Group.

He joined Tolley in 2006 and is now Director of Tax Content Transformation.

Autumn Budget 2017

Looking at the headlines before the budget you could be forgiven for thinking that Philip Hammond was the condemned man, about to present the toughest budget for a generation. Roll forward to lunchtime and when "box office" Phil stood up to entertain the nation he appeared relaxed – even relishing his time in the spotlight, and certainly enjoying baiting the opposition benches, with the predictably noisy reaction. You certainly wouldn't have thought his job was at risk; or maybe it was the performance of a man who had nothing to lose.

There were the usual set piece attempts at comedy – the skit with the cough sweets went down well on the government benches, the Top Gear reference worked reasonably well, even if it was signposted and wasn't particularly original. The one that did fall a bit flat was the "three steps" to solving the problem of the "staircase tax" – the old adage of "if you have to explain it…" probably applies.

He seemed less comfortable dealing with a couple of thorny issues – the downgrades to growth from the OBR and announcing help to smooth the introduction of universal credit were both delivered with his eyes firmly fixed on his notes – "if I don't look at anyone it will be fine".

When it came to the deficit and debt he felt he was on stronger ground as the OBR figures supported a story of a reducing debt burden even if, as Paul Johnson of the IFS pointed out, the future headroom for meeting his target has halved since the spring.

One of the first things that we did find out was that whatever the final Brexit "divorce" settlement amounts to the UK has already spent £700m on Brexit preparations and a further £3bn is being set aside to fund future costs.

If there was a theme, it was about looking forward to "embrace the future" - the next and future generations received 11 mentions in all. It was also interesting that in the text of the speech published on gov.uk you'll see [political content removed] no less than 12 times indicating that he is just as capable as George Osborne in making political capital. He particularly enjoyed making the comment about having his "ear bent by my 13 Scottish Conservative colleagues" – a phrase that's not been uttered for a very long time.

We had two mentions of the inevitable "northern powerhouse" but in both cases they were accompanied by the more recent "midland's engine" – just so that no-one felt left out.

As is now the case the actual tax announcements in the speech were thin on the ground and when they did come there was very little detail, not that we expected it. We found out that the personal allowance and basic rate threshold will be raised, despite rumours of them being frozen; the VAT threshold will be frozen, despite rumours of it being reduced based on the Office for Tax Simplification's recent report (probably the only moment of jeopardy when we were guessing "will he, won't he"); the fuel duty rise will be cancelled again, - and apparently that has cost the treasury, or saved drivers, £46bn since 2010.

On the anti-avoidance front there were also mentions of income tax applying to royalties paid to low tax jurisdictions where they related to UK sales, and making online marketplaces jointly liable for VAT due from the sellers that operate through them showing, according to Mr Hammond, the government's commitment to leading the charge in the OECD to deal with the challenges posed by digitalisation.

As usual I'll leave the analysis of the detail to the Tolley experts but I am extremely grateful for their hard work and dedication, working tirelessly into the evening and night to bring you a touch of insight on not only what the announcements are, but also what they mean to you and your clients. We are also very lucky to have a large team supporting us and making it all possible. We hope you find the commentary useful.

Simon Groom
Director of Tax Content Transformation

PAULINE LONSDALE
Inheritance Tax Manager, Tolley

Pauline joined Tolley in 2012 as writer and editor for the IHT, Trusts and Estates module of Tolley®Guidance. She has been an independent practitioner for many years engaged in personal tax, trusts and estates work. In addition to advising her own clients, she acts as consultant to solicitors and accountants, focusing on finding practical solutions to a broad range of private client problems. She now divides her time between her own tax practice and Tolley®Guidance.

Pauline is a member of the ICAEW, CIOT and STEP. She sits on the STEP Practice Committee and spent some time as a tutor for the STEP Diploma programme.

RICHARD WHITAKER
IHT, TolleyAdvance Manager, Tolley

Richard joined LexisNexis in March 2017, after working at a variety of small, regional and national law firms as a private client solicitor. During his time in practice, Richard covered the whole spectrum of private client work although, more recently, his work focussed on wealth protection and inheritance tax planning. Since moving to Tolley, he has retained his links to law and is an examiner for the Equity and Trusts module of the GDL.

Prior to his legal career, Richard spent 12 years in the Army as a musician and soldier, travelling the world (including an operational tour of Kosovo).

Richard is a full member of the Society of Trust and Estate Practitioners.

Autumn Budget 2017 – IHT, Trusts and Estates overview

The Chancellor, Philip Hammond, delivered his **Autumn Budget** on 22 November 2017. This was the first formal Budget delivered in the Autumn, replacing the Autumn Statement that usually takes place around this time. The idea behind the change in the timetable is to allow sufficient time for drafting, consultation and parliamentary scrutiny on new legislation before the start of the next tax year. Finance Bill 2018 will be published on 1 December 2017 and is expected to receive Royal Assent before the start of the 2018/19 tax year.

Unsurprisingly, in the light of the government's other preoccupations, no new measures were announced relating to inheritance tax, but there were some provisions that will have an impact on trusts, particularly offshore trusts, estates and charities.

Offshore trusts

In his Budget speech the Chancellor was keen to highlight what the government has already done to tackle anti-avoidance. The Treasury took the somewhat unusual step of publishing a **document**, along with other Budget papers, that summarises all the anti-avoidance measures that have been introduced since 2010. The list has an unmistakable international flavour, indicating that many avoidance strategies depend on transferring wealth offshore. Reference is made to the publication of the 'Panama papers', which has led to 66 criminal and civil tax investigations by HMRC, and, more recently, the 'Paradise papers'.

Recent and proposed changes to the taxation of non-resident trusts arise in the context of this offshore anti-avoidance theme, which has made a regular appearance at every recent Budget. Most recently, the changes to deemed domicile status in F(No2)A 2017 had a consequential effect on the taxation of payments from non-UK resident trusts (to those becoming deemed domiciled). See the **Domicile for UK inheritance tax** guidance note. Certain "trust protections" were included in F(No2)A 2017, but further anti-avoidance proposals were included in the draft clauses for Finance Bill 2018, published in September 2017. Announcements in today's Budget build on those measures. It is helpful to look at the complete package to understand what is going on.

Changes already legislated

Income or gains arising in non-UK trusts with UK resident settlors may be attributed to the settlor when the settlor has an interest in the trust. However, a non-domiciled settlor, using the remittance basis, has the option of avoiding tax on the income or gains by not remitting them. The introduction of deemed domicile status for income tax and CGT purposes would, without any amending provisions, impose a charge on those long-term residents who become deemed domiciled, having created their excluded property trust in good faith.

TCGA 1992,s 86; ITTOIA 2005, s 624

Finance (No2) Act 2017 provides protection for those settlors by disapplying the attribution rules. The relief does not apply to those becoming deemed domiciled with a UK domicile of origin (condition A non-doms).

F(No2)A 2017, Sch 8 paras 18–36

At the same time as providing some relief, Finance (No2) Act 2017 introduces a limiting anti-avoidance provision if income is paid to close family members (generally, spouses and children) who would not be taxed on it because they are non-resident beneficiaries, or they are UK resident beneficiaries taxable on the remittance basis.

Proposals for Finance Bill 2018

Although the government offered some protection to offshore trusts in Finance (No2) Act 2017, the capital payments rules are tightened up in other respects in Finance Bill 2018. Capital payments to UK resident beneficiaries from non-UK resident trusts incur a tax charge on the beneficiary. The charge is calculated by matching payments to beneficiaries with capital gains arising within the trust. If there are no unmatched gains within the trust, the payments avoid a tax charge on the presumption that the payment comprises original capital. See the Tax on capital payments from non-resident trusts guidance note.

TCGA 1992, s 87

An established tax planning strategy is to take advantage of the strict matching rules where there are both UK resident and non-UK resident beneficiaries. By paying non-UK resident beneficiaries first, their payments are matched to the trust gains in priority to the payments to UK resident beneficiaries. The result is that the tax charge on the UK residents can be reduced because the matchable gains have been used up on the non-residents not subject to UK tax. This process is sometimes referred to as 'washing out' the gains.

The Autumn Budget OOTLAR confirmed that, following consultation, Finance Bill 2018 will include the provisions trailed in the draft clauses published in September 2017, subject to only minor amendments.

The essence of the new rules is to disregard capital payments to non-UK residents when applying the matching rules so that gains remain available to be matched to (and charged on) payments to UK residents. Payments to temporary non-residents will be disregarded until the person returns to the UK.

In addition, where a payment is made to a beneficiary who is a relative of the settlor, and the settlor is resident in the UK, the payments will be taxable on the settlor. This rule applies regardless of whether the beneficiary is UK resident. A relative of the settlor is a spouse, civil partner or child of any age.

Finally, complex rules will be introduced to tax 'onward gifts'. Where a payment or benefit has been received by an individual who does not pay tax on the distribution (because he is non-resident or a remittance basis user), and he then makes an onward gift to a UK resident, the UK resident is treated as if they had received the payment from the trust.

The effect of these latest amendments is to somewhat curtail the trust protections included in the previous Finance Act.

Other offshore anti-avoidance

Other anti-avoidance proposals confirmed in the Autumn Budget paras 3.66–3.67 include a requirement to notify HMRC of new offshore structures and an extension of the time limit for assessment.

A consultation document published in December 2016 discussed imposing an obligation on all persons involved in creating or promoting offshore avoidance arrangements, which might include both UK based and non-UK based persons or businesses. The suggested arrangements for notification mirror those for DOTAS. See the DOTAS — notifiable IHT schemes guidance note. Examples of the type of structures targeted are given in the consultation document. They include offshore trusts and companies. HMRC's response to the consultation will be published on 1 December 2017. New legislation is to be taken forward with the OECD and the EU.

The extended time limit for non-deliberate offshore tax non-compliance will be extended to 12 years of back taxes.

Taxation of trusts — simplification

Perhaps as light relief from the ever increasing complexity of anti-avoidance legislation, trusts and estates practitioners will be interested to hear that the government intends to publish a consultation (Autumn Budget para 3.9) on 'how to make the taxation of trusts simpler, fairer and more transparent'. No further details are given, though it is assumed that this will be confined to income tax, since previous recent consultations have focussed on IHT. The original proposal to 'simplify' inheritance tax on trusts went through three consultation cycles, and the final changes bore almost no resemblance to the original suggestions. For a reminder of the 'simplification journey', see the **Calculation of principal (10 year) charge before 18 November 2015** guidance note. We imagine that neither the government nor practitioners wish to revisit that particular aspect of trusts taxation. Income tax for trusts, on the other hand, has not been overhauled for some time. The last major revision was the Vulnerable Beneficiary provisions of 2005, which by common consent among practitioners did not achieve the stated intention. See the **Vulnerable beneficiary trusts** guidance note. And that revision was itself a cut-down version of a more ambitious project. So it seems likely that income tax for trusts is due for scrutiny.

The taxation of trusts has suffered in recent years from the fallout from mainstream amendments to income tax. Close observers of the legislative process will have noted that the effect on trusts of a new piece of income tax law is all but overlooked until a tinkering amendment is squeezed in at the eleventh hour. The most obvious recent example of this is the abolition of the dividend tax credit and deduction of tax at source on interest. Trusts do not benefit from the savings nil rate band and dividend nil rate band, which relieve many individuals of a tax liability on modest investment income. The simplification for individuals has imposed heavier compliance burdens on trusts because now that tax is not credited or deducted at source, many trusts have been brought into self assessment to declare and pay income tax.

With the advent of the new trusts register, the introduction of which has been fraught with problems and delays, practitioners may welcome any proposals that lessen their administrative burden.

Other candidates for review are:

- the mismatch between the tax held in the tax pool and the tax credits available for beneficiaries. See the **Discretionary trusts — tax pool** guidance note.
- the general compliance procedure of trusts paying tax and beneficiaries claiming it back
- the rules for settlor-interested trusts which are complex and based on historic rates of income tax. See the **Settlor-interested trusts — calculations and compliance** guidance note.

We await further details on the substance and timings of this consultation. It is to be hoped that at least some of the anomalies mentioned will be addressed, and practitioners are encouraged to give their opinion.

Marriage Allowance

Individuals (and personal representatives) will soon be able to claim the transferable tax allowance where one or both parties to the marriage or civil partnership has died.

The transferable tax allowance (or 'marriage allowance') is a mechanism whereby 10% of an individual's personal income tax allowance can be transferred to a spouse or civil partner. The rules are subject to fairly strict criteria and are confined only to those couples who are both basic rate tax payers. For a reminder of the current provisions, which applied from 6 April 2015, see the **Personal allowance** guidance note in the Personal Tax module.

ITA 2007, s 55B

Legislation will be introduced in Finance Bill 2018 to amend Sections 55B to 55D. The new rules, effective from 29 November 2017, will allow an individual to claim the transferable tax allowance from a predeceased spouse or civil partner. The claim, which can be backdated four years, can also be made by the *personal representatives* of a deceased taxpayer (even where the spouse or civil partner has also died).

The measure corrects unfairness in the current system, which requires the transferor to make the election. Obviously if the person has died, he cannot make an election. The transfer is more likely to apply to a couple in the year in which one spouse dies than in a normal year. Where a person dies part way through the tax year, his or her income is more likely to fall below the personal allowance. For example, where a person with an annual income of £40,000 dies before the end of June, the spouse will be entitled to claim the transferable tax allowance because the deceased spouse's income for the three months to the date of death is only £10,000.

It cannot be claimed where the couple are eligible for the married couple's allowance (MCA) because one of them was born before 6 April 1935. Depending on the age of the parties, practitioners will need to consider one of the transferable allowances when finalising tax liabilities to date of death.

Charities — Gift Aid donor benefit rules

Following the November 2016 responses to the **Simplifying the Gift Aid donor benefit rules consultation** (which included further consultation questions), the government will legislate in the 'Finance Bill 2018' to simplify the donor benefit rules that apply to charities that claim gift aid tax relief on donations.

The changes will have effect on and after 6 April 2019.

Where an individual makes gifts to charity (that qualify for gift aid) they can receive benefits from that charity without affecting the gift aid relief, provided the value of the benefits is within certain limits.

ITA 2007, s 418

The current three monetary thresholds that charities have to consider when determining the value of benefit they can give to their donors will be replaced by two percentage thresholds:

- the benefit threshold for the first £100 of the donation will remain at 25% of the amount of the donation
- for larger donations, charities will be able to offer an additional benefit to donors up to 5% of the amount of the donation that exceeds £100

The total value of the benefit that a donor will be able to receive remains at £2,500 (or £500 where the gift was made before 6 April 2011).

Four extra statutory concessions that currently operate in relation to the donor benefit rules will also be brought into legislation:

- **the split payment rule** — if the charity can accurately establish a benefit's market value and that product is sold separately and offered to the general public, the charity can deduct its market value from the gross donation and claim Gift Aid on the rest of the money donated
- **averaging method** — the charity can average the cost of a benefit over a number of donors (for example, if the benefit is a dinner the charity would divide the overall cost by the number of guests attending the meal)
- **10 year rule for a 'lifetime' benefit** — for a lifetime benefit, the total cost of a benefit is valued over a 10-year period
- **literature is of inconsequential value** — broadly, literature that describes or promotes the work or objectives of the charity is assigned no financial value.

A summary of responses to a consultation on simplifying the gift aid donor benefit rules will be published on 1 December 2017.

Tax administration and compliance

The government has announced that the Certificate of Tax Deposit (CTD) scheme will end on 23 November 2017.

Historically, taxpayers were able to deposit funds with HMRC in respect of certain tax liabilities. This was particularly attractive in estates where the valuation of assets was problematic — it allowed executors to prevent interest from accruing while final valuations were confirmed. It was also useful where tax was payable under the instalment option. It would allow the overpayment of instalments without triggering the whole liability. See the **Payment of IHT on death** guidance note.

The good news is that those who hold existing certificates with HMRC will be able to redeem them until 23 November 2023.

RESEARCH

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