The missing Act

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Mike Truman reports on the CIOT Autumn Residential Conference at Warwick University, 2–10 September 2017

Key Points

What is the issue?

The CIOT Autumn residential conference was held on 2-10 September 2017. Speakers addressed the latest changes in tax and other issues affecting advisers.

What does it mean to me?

The conference ran sessions on MTD, Multiple Dwellings Relief, the Substantial Shareholdings Exemption, Finance Act analysis and PCRT, to name a few topics.

What can I take away?

The CIOT residential conferences offer an opportunity to listen to experts on a variety of tax topics and enjoy networking with other advisers.

For some of us, the rhythm of the year is punctuated by our half-yearly pilgrimages to Cambridge and Warwick Universities for the spring and autumn CIOT residential conferences. Others, of course, have a life instead…!

However, if, like me, you regularly attend these CPD-fests, you will know the programme perennials. In March or April (depending on the timing of Easter), some luckless speaker gets a week or two if they are lucky, a couple of days if they are not, to digest and present cogent analysis of the Budget and/or Finance Bill. In September someone draws the normally rather longer straw of analysing the Finance Act passed in the previous July.

The latter was problematic last year with a delayed Royal Assent, and downright impossible this September as the only Finance Act already passed said nothing of any great interest. In future years, on the new timetable, presumably the Easter conference will look at the Act that either has been, or is about to be, passed, and September (as was the case this year) will look more widely at topical issues.

UK residential property is perennially topical, and Robert Jamieson of Mercer & Hole looked at the extension of IHT to enveloped UK residential properties from 6 April, albeit that the legislation will be in the No 2 Act. The provision was based on the CGT definition of a residential property, but Robert pointed out that, unlike CGT, IHT does not operate on the basis of annual tax years, so there were questions about whether property was included if it were no longer residential but had been in the past.

Originally the proposal was for a 'look-back' period of two years, with the property caught if it had been residential at any time in that period. Robert explained that this had been dropped, and it was only the use at the time of the chargeable occasion that would matter. He did, however, remind delegates that there is to be a

Targeted Anti-Avoidance Rule neutralising arrangements with a main purpose of securing a tax advantage.

Heard it through the grapevine

Anyone who has heard Peter Rayney speak will know that, while his examples are drawn from his consultancy work (Peter Rayney Tax Consulting Ltd), he anonymises them with names from his encyclopaedic musical knowledge. No surprises, then, that Marvin is incorporating his residential property business into Grapevine Properties Ltd, but that's still no excuse for one of the houses to be 67 What's Goingon Avenue…

Peter's point was that he has come across several conveyances where the use of Multiple Dwellings Relief (MDR) for SDLT purposes had been overlooked. Because the transactions in an incorporation are linked, not claiming MDR can result in significant amounts being taxed at higher SDLT bands.

His example had three properties going into the company, at £200k, £400k and £500k respectively. SDLT on the total consideration of £1.1m would be £86.750. However, by making a claim for MDR, tax is first calculated on the average value of the properties, £366,667, then multiplied by the number of properties. The effect of the banding system is that the tax charge is only £19,333 per property, £58,000 overall, a saving of £28,750. If this has initially been missed, the time limit for a correction is twelve months from the SDLT 1 filing date – the four-year overpayment relief rules do not apply.

Bob Trunchion, of MHA MacIntyre Hudson, examined the tangled web that is now pensions tax relief. The constant reductions in annual allowance have caused a significant problem for those in final salary schemes. The complex calculation of the amount treated as having been contributed is very sensitive to significant salary increases after long service. An increase of £10,000 in salary after 15 years of service for someone on a relatively modest £50,000 could still give an annual contribution of over £50,000, some £10,000 in excess of the current annual allowance. Carried forward annual allowance may cover it, but this has to be checked to avoid unwelcome tax bills.

The problem gets even more complex for health professionals who often have both NHS final salary pension entitlements and money purchase entitlements from private work. Accessing the latter flexibly will not change the annual allowance (calculated on their total annual contribution) insofar as it affects the final salary scheme, but it will result in a Money Purchase Annual Allowance applying to the personal pension. This will be retrospectively reduced to £4,000 from 6 April 2017 by the Finance No 2 Act, and any excess contribution would be taxable.

Pete Miller, of the Pete Miller Partnership, had some mostly positive news about the changes to Substantial Shareholdings Exemption (SSE). One of these is particularly helpful for those trying to construct earn-outs.

The substantial shareholding requirement is that the investing company must have had a 10% stake (defined as usual in relation to share capital, distributable profits and assets distributable in a winding up) throughout a twelve-month period. Prior to 1 April 2017 this had to begin not more than two years before the day of the disposal. From 1 April 2017 this is extended to six years. It is therefore possible to leave, say, a 5% holding in the company with a purchase price set by earn-out provisions for a period of up to five years, and still qualify in full for SSE.

One of the other major changes to the SSE from 1 April 2017 is that the requirement for the target to continue trading as a qualifying company after the transaction has been dropped. However, as Pete pointed out, subsequent changes to the company's trading position had no effect on the tax exemption, so it was an easy test to meet and arguably achieved nothing.

UK GAAP

Bill Telford, of Telford Financial Training, explained what 'every tax practitioner needs to know about new UK GAAP'. Since I haven't paid much attention to financial reporting standards since they stopped being SSAPs, that was a tall order, but Bill concentrated on the practical issues that affect tax computations.

The critical issues are the calculation, and then the taxation implications, of the adjustments made on first adopting new UK GAAP and then in future sets of accounts. The tax legislation for the former has now been in place for some time, applying to any changes in accounting policy, and ensures that any receipts are taxed, and deductions relieved, once and once only. The latter requires the adviser to know whether the changes made by new UK GAAP change the taxable profit or merely the accounting profit, requiring readjustment in the tax computation.

Bill provided a useful table of the main changes. For example, changes in amortisation of goodwill arising from a change in useful life made by new UK GAAP will change both the accounting and taxable profit, but fair value gains on shares (under FRS 102, but not the micro-entities standard FRS 105) will be deducted again in the tax computation and will not, therefore, affect taxable profit.

IR35

Paul Mason, of Abbey Tax, gave an overview of IR35 and how we got to where we are today, but concentrated on the more recent provisions requiring the engaging business to operate IR35 when the contractor was working for the public sector. He pointed out some of the anomalies in the guidance, in particular the need to make bookkeeping entries that reduced turnover or taxable profit with no obvious justification for doing so except that it makes the figures work.

He also gave some anecdotal evidence about the initial response of both the public sector bodies and the contractors. Initially many of the bodies had simply said that all PSCs would be subjected to IR35, but this had resulted in workers walking off the job. Only the MoD is apparently sticking to the hard line, with other bodies now prepared to at least use the HMRC status tool to determine whether IR35 should apply.

Jeremy Mindell, of Primondell, gave a wide-ranging review of some recent and forthcoming employment tax changes. The new salary sacrifice changes come in from 6 April 2017 but with different transitional provisions dependent on the benefit – one year for most, but four years for living accommodation, cars etc and school fees. Although changing the benefit during the transitional period will normally mean the new rules apply, this does not affect school fees provided the employer, school and child remain the same.

Jeremy also alerted delegates to increased activity from HMRC on a spouse's wages. The significantly increased personal allowance, together with the national insurance employment allowance, has resulted in many business proprietors increasing the salary paid to a spouse or other relative accordingly. HMRC have a historically good record of challenging such payments as not being wholly and exclusively for the purposes of the business, and a recent case, *McAdam v HMRC* [2017] UKFTT 838. Although the deduction claimed for wife's wages here was only £90 per week, HMRC were not satisfied that the typical duties of answering the telephone and a small amount of administrative work justified this. They suggested three hours per week plus a further two hours a month; at £8 per hour (for 2014) this came to £1,344 a year, which was the figure they eventually assessed. Mr McAdam was not able to displace this in the tribunal.

Time to relax?

Nichola Ross Martin, of Ross Martin Tax Consulting, explained the new relaxation of the rules for corporate losses from 1 April 2017, which allows new losses to be carried forward against total profits rather than just those of the same trade. Although it is coupled with a restriction on the use of carried forward losses, this only applies where the profits being relieved are over £5m. Since most of the delegates at these conferences are from comparatively smaller practices, the positives substantially outweighed the negatives for most.

However, Nichola also pointed out some of the pitfalls,. In general, losses prior to 1 April 2017 are restricted, and there are restrictions on group relief when a company can use brought forward losses against its own profits.

With the unenviable job of closing the conference, John Cullinane looked at the new rules for Professional Conduct in Relation to Taxation (PCRT). The need to know this guidance should be clear to all readers, but in case it is not, these are the principles accepted by most of the bodies representing tax advisers to assist their members in how to act professionally, particularly in the tripartite relationship of member, client and HMRC.

Although the guidance covers the whole scope of professional practice, it is fair to say that the section on tax avoidance has attracted a great deal of attention. Advisers who do not want to give tax planning advice that they do not consider to be appropriate or within their own principles or ethics, do not have to do so. However, they must be careful to ensure that they have excluded it from the scope of their engagement with their client. Where a client does enter, or is considering entering, into a tax planning arrangement, the member’s involvement will require a consideration of whether the planning has a ‘sustainable basis’ for reporting on a tax return.

And so another residential conference came to an end, with the delegates collating the planning points they needed to apply to clients on their return to the office. The

Spring Residential Conference is the weekend of 22–25 March at Queens’ College Cambridge; why not put the dates in your diary now?