Scottish update

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Joanne Walker reports on the Scotland Branch Conference held in Stirling

Key Points

What is the issue?

The ATT and CIOT Scotland Branch Annual Conference was held on 3-4 November 2017. The speakers addressed recent tax changes and issues pertinent to practitioners in Scotland.

What does it mean to me?

The conference featured sessions on Brexit, the Finance Act, Ethics and Professional Conduct in Relation to Taxation, Losses and the Substantial Share Exemption, Making Tax Digital, Domicile, Land and Property Taxes, Employment Status and the Gig Economy.

What can I take away?

The ATT and CIOT Scotland Branch Annual Conference offers the chance to listen to experts on a variety of tax topics and enjoy networking with other advisers.

With the UK Autumn Budget 2017 and Scottish Draft Budget for 2018/19 looming on the horizon, the acting deputy chair of Scotland Branch Sean Cockburn welcomed delegates to the Scotland Branch conference on Friday 3 and Saturday 4 November 2017 in Stirling.

Update

Delegates heard from John Preston, President of the CIOT, who highlighted the major revamp of the CIOT exams, announced a few months earlier. It is hoped the updated exams will meet stakeholder needs, and test the skills needed by tax professionals going forward. They should take effect with the May 2019 sitting.

The President also mentioned Professional Conduct in Relation to Taxation (PCRT), which had just been updated prior to last year’s conference. The update was carried out in response to a challenge by the UK Government in March 2015, and appears to have been recognised positively by HMRC and the UK Government.

Brexit: where next?

Professor David Bell, University of Stirling, considered progress to date and looked to the future in relation to Brexit. While Phase 1 was essentially high-level and concerned the short term, Phase 2 concerns the framework for the future

relationship between the EU and the UK, and is of more importance in the long run.

Professor Bell considered the UK position paper on the Irish border, pointing out a number of potential problem areas. The financial settlement issue was described as ‘nightmarish’: if the UK does not keep its commitments to 2020 under the current framework, there will be a Budget crisis in the EU for net recipients.

While steering clear of endorsing it, Professor Bell explained how the £350m per week ‘red bus’ figure might have been calculated by members of the Leave campaign. He also set out some of the UK’s key liabilities and assets in relation to the EU.

Especially enlightening was Professor Bell’s explanation of a World Trade Organisation (WTO) outcome. In addition to reminding delegates that the UK would face the cost of running things alone that used to be shared with the EU, he detailed the complexities of agreeing ‘schedules’ for tariffs on goods and making quota agreements where the EU currently has quotas, using lamb imports as an example. There would need to be an agreement over the split of the current quota between the UK and the EU. Moreover, other WTO countries might have a say in whether any agreement is accepted.

Finance Bill/Finance Act update

Robert Jamieson, Mercer & Hole provided insights into Finance Bill (No. 2) 2017 and Finance Act 2017. He reminded us that most clauses were dropped from the original Finance Bill, which became Finance Act 2017 in April, due to the calling of the General Election. Finance (No. 2) Bill 2017 appeared only in September, but picked up most of the previously abandoned clauses.

From April 2017, thanks to new trading and property allowances, individuals do not have to pay income tax on trading or property income of up to £1,000. Where income exceeds £1,000, the individual can choose to deduct the £1,000 allowance instead of actual expenditure. An election is needed to claim partial relief or to disclaim full relief.

The new optional remuneration arrangements (OPRA) rules aim to stop most of the income tax and National Insurance contributions (NIC) advantages offered by salary sacrifice schemes and flexible benefit arrangements, by deeming that the taxable value of a benefit obtained through an OPRA is the higher of the existing taxable

value of the benefit and the salary foregone. However, the new legislation does not apply to certain benefits the Government wishes to encourage, such as employer pension scheme contributions, employer-provided childcare, and cycle-to-work schemes.

Important changes to make Business Investment Relief should take effect from 6 April 2017, including allowing relief on the acquisition of existing shares (not only new subscriptions), extending the start-up period to five years and extending the relief to hybrid companies.

Ethics and Professional Conduct in Relation to Taxation (PCRT)

Ray McCann, Deputy President of the CIOT and Charlotte Ali, Head of Professional Standards, ATT discussed the new standards for tax planning set out in PCRT.

It was noted that if the professional bodies had not updated PCRT to set out new standards on tax planning, the Government probably would have taken its own action.

There was a close examination of the new standards in relation to tax planning. For example, tax planning must be client specific and assumptions that assume away all anti-avoidance legislation are worthless. There should always be full disclosure and transparency, such that the tax advice does not rely for its effectiveness on HMRC having less than the full facts. A relevant question is whether not putting something in the white space leaves you open to accusations of incomplete disclosure.

While members must not create, encourage or promote tax planning arrangements or structures that set out to achieve results contrary to the clear intention of Parliament and/or are highly artificial or highly contrived and seek to exploit shortcomings within the relevant legislation, this does not preclude members from advising on tax planning.

A key issue is how to identify the clear intention of Parliament in enacting relevant legislation. Any opinion must be credible and records should show how and why you have reached it. Sources of assistance may include the legislation itself, HMRC’s view, and Hansard.

Losses and SSE unbound: HMRC giveth and HMRC taketh away

Pete Miller, The Miller Partnership, covered new legislation that took effect on 1 April 2017 on losses and the substantial shareholdings exemption (SSE).

The new rules allow for the more flexible use of corporate losses carried forward and of group relief – although losses arising pre-1 April will remain under the old rules.

Trading losses can be carried forward to use against future total profits (not just profits of that trade) under s. 45A(3) CTA 2010, and in future years under s. 45C CTA 2010, provided certain conditions are met. Failing that, carry forward under s. 45B CTA 2010 is possible, to use against future profits of the same trade. In both cases, it is possible to claim how much of the loss is actually relieved in the later period.

Group relief for carried-forward losses is also extended, by allowing a company to surrender losses and other amounts carried-forward. The surrendered losses can be set against the total profits of the claimant company.

There are new restrictions on the use of losses for companies whose profits exceed £5 million – they will only be able to shelter a maximum of 50% of future profits with brought forward losses. In addition, a new targeted anti-avoidance rule allows HMRC to counteract by ‘just and reasonable’ adjustments any loss-related tax advantage from relevant tax arrangements.

Finally, there are changes to various SSE requirements, including that the investing company must have held a substantial shareholding in the target company throughout a 12-month period beginning not more than six years before the day on which the disposal takes place.

Making Tax Digital (MTD)

Richard Wild, Head of Tax Technical Team, CIOT, took delegates on a journey through the ever-changing environment of MTD.

Looking at MTD for business – income tax, NIC and corporation tax – it was noted that although there would be no mandation until at least April 2020, HMRC will not then be sympathetic to those who claim not to be ready. Therefore, it is essential to plan ahead.

Meanwhile, HMRC have identified some exemptions in relation to corporates and large unincorporated businesses, such as for non-resident companies subject to

income tax and large partnerships with turnover in excess of £10 million. Other exemptions from MTD for business include the digitally excluded, businesses with total income of less than £10,000 per annum, charities, CASCs etc.

MTD for VAT will come into force with effect from April 2019. It applies to all businesses with taxable turnover in excess of £85,000 per annum including non-UK businesses with UK VAT registration and those within VAT special schemes. The exemptions are limited to the current exclusions for VAT online filing.

The concern is that currently, even though businesses have to file VAT returns online, only 13% of businesses do so directly from software, meaning MTD for VAT will require a huge shift in functionality and behaviour for the majority of businesses.

MTD for individuals is unaffected by the announcement in July. HMRC are continuing with a variety of measures to digitise and tax in real time, including dynamic coding, simple assessment and pre-population of the personal tax account with bank/building society information.

Updating some thoughts on domicile

James McNeill QC, Axiom Advocates, set out some key domicile principles: it has the same meaning in all branches of law; everyone gets a domicile of origin at birth; you can acquire a domicile of choice through residence and intention.

Domicile cases are often fact-based, so an appellate court rarely interferes with the judgement of a court of first instance. Sometimes differences may arise when drawing inferences from facts.

To illustrate these points, a number of cases were considered, starting with that of Mr Gulliver. The judge found that HMRC’s original ruling on his domicile, in relation to an earlier tax year, was not binding on another tax year, and did not prevent HMRC from challenging his domicile status later.

Mr Agulian was born in Northern Cyprus and lived in the UK for a number of years. The court of first instance ruled that he was domiciled in England at his death. The Court of Appeal however, thought the court of first instance had underestimated the enduring strength of his bond with Cyprus and in particular, it viewed the division into periods pre- and post-1995 as incorrect. Taking the question holistically, it ruled against him having acquired a domicile of choice in England.

The case of Mr Henwood shows how to view a person who has moved away from their domicile of origin. Mr Henwood was born in England, and acquired a domicile of choice in the Isle of Man. He claimed his domicile of choice had changed, from the Isle of Man to Mauritius. The court determined that he did not acquire a domicile of choice in Mauritius, thus his domicile of origin re-emerged.

Land and property taxes

Carl Bayley, author of several tax guides, surveyed current issues for landlords and property owners.

The cash basis for landlords, available from April 2017, is now the default for individuals and partnerships, provided gross rent does not exceed £150,000. It is possible to elect (annually) to use the accruals basis. Joint owners may elect separately – so one could use the cash basis, and another use the accruals basis. Spouses and civil partners who own property jointly must however use the same basis.

Attention was drawn to a number of problems, including the potential acceleration of income and deferral of relief. Furthermore, no relief is available for abortive professional fees, for example when attempting (but failing) to buy a property. Capital expenditure that would qualify for capital allowances should be claimed on the cash basis, and cannot be disclaimed.

HMRC’s change of approach in relation to interest and finance costs was considered. Historically, if interest payments were either incurred for business purposes or the borrowing was up to the value of capital introduced, relief would be available. Now, their view is that interest payments must be incurred for business purposes; meeting the capital introduced condition alone is not sufficient.

There was also a recap of the restriction on the rate of relief on interest and finance costs for residential landlords. This will take effect by changing from an expense deduction to a 20% tax reducer. Delegates were shown how to consider the size of the problem, before going on to look at possible solutions.
Employment status and the gig economy

Anne Fairpo, Temple Tax Chambers, noted that many of the issues in relation to models of employment are not new; it is merely the scale that has changed.

One of the key issues is the mismatch between employment law and tax law.

Under employment law an individual can be: employed; a worker; self-employed. Under tax law there are only two options – an individual can be either employed or self-employed. This can lead to odd situations, for example, an individual may be taxed as an employee, but have no employment rights.

A number of tax 'solutions' to the employment status issue were then surveyed, including the construction industry scheme (CIS), IR35, agency workers regulations, umbrella companies rules and 'government' IR35. It was noted that IR35 has so far failed spectacularly. Moreover, the IR35 and 'government' IR35 rules do not help resolve the grey area that exists; they merely shift the responsibility.

The patterns in the growth in self-employment were considered, with reference to the recent Taylor Review. Going forward, NIC is likely to increase for the self-employed and there may be CIS-type deductions for other sectors or industries. There is likely to be ongoing consideration of employer's NIC. In the meantime, the lack of alignment between tax law and employment law will continue to result in problems for workers.

Conclusion

Guests attending the conference dinner heard from Derek Mackay MSP, the Cabinet Secretary for Finance and the Constitution, who offered his thoughts on the devolved tax powers available to Scotland, and in particular those on income tax.

The conference covered a lot of ground, providing members and students with the opportunity to hear from a range of speakers and to network with fellow tax professionals from across Scotland.

If you have not attended a conference before, then consider putting one in your diary for 2018. As well as the Scotland Branch conference in November, there are the Spring and Autumn conferences. For more information and to book, visit the CIOT website.