Spring is sprung

Employment Tax | Inheritance tax and trusts | Large Corporate | OMB | Personal tax

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Mike Truman reports on the CIOT Spring Residential Conference held in Cambridge from 23–25 March 2018

Key Points

What is the issue?

The CIOT Spring residential conference was held on 23-25 March 2018. Speakers addressed the latest changes in tax and other issues affecting advisers.

What does it mean to me?

The conference ran sessions on the Residence Nil Rate Band; employment tax topics such as ‘off payroll workers’, IR35 and the ‘gig economy’; entrepreneurial tax reliefs; client due diligence; clearances; and cross-border VAT issues 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.

My father always used to greet Spring with a little nonsense ditty that started ‘Spring has sprung, the grass is riz…’. I tend to greet it with ‘Time for the CIOT residential conference in Cambridge’. Hello, I’m Mike, I’m a tax nerd. It was only just (astronomically) Spring, the weekend of 23–25 March, but some reasonably decent weather wasn’t enough to keep the delegates away from the lecture theatre, with full houses at most of the sessions.

The first was given by Lucy Obrey, a partner in Higgs & Sons, looking at that model of how not to devise a tax policy, the Residence Nil Rate Band (RNRB). One of the many idiosyncrasies that Lucy highlighted is that if the first death happened before 6 April 2017 the RNRB cannot, by definition, have been used yet. It is therefore available to carry forward to the surviving spouse, subject to taper relief if applicable. She also corrected the widespread misapprehension that you can only use the RNRB of one predeceased spouse – while the amount claimed cannot exceed one full RNRB, it can come from more than one predeceased spouse if they had used some RNRB on their own deaths.

The most important area for planning in the case of moderately wealthy estates is to avoid having the RNRB tapered away because the estate on second death is worth more than £2 million. Lifetime gifts should therefore be considered, including deathbed gifts (after taking into account the CGT implications) since it is only the estate on death that counts for RNRB taper, not the cumulative total over the past seven years.

Susan Ball, of Crowe Clark Whitehill, looked at ‘Off-payroll workers’; in other words, the tricky issues around the gig economy, IR35, Managed Service Companies, etc. Thinking particularly of the implications for engagers, she advised that businesses should have a proper process for engaging off-payroll workers, ensuring that adequate documentation was retained showing the reasons why they were considered not to be employees. She said that mutuality of obligation no longer really featured on the HMRC tool (CEST) for determining employment status and had become little more than a question of whether you had to do the job when asked. CEST is being used extensively by public bodies to determine status, even though it has been criticised as inadequately reflecting the case law. A positive opinion can be relied on if the questions have been accurately answered, but Susan warned the full report and not just the answers needs to be kept (the tool gives an option for producing a pdf showing all the answers as well as the result).

Although the tests are well known, they can be difficult to apply in an ongoing situation. A worker (in the non-technical sense) may initially be taken on for one short-term and time-limited task, where off-payroll working is a realistic assessment, but then be used more and more after proving their worth. All too easily an engager finds the worker has been with them for a couple of years, used at the engager’s direction on a number of different tasks, and has become part and parcel of the organisation without their employment status being reviewed.

On Saturday morning, David Marcussen of Marcussen Consulting gave delegates a plethora of tips on using the various entrepreneurial tax reliefs. The FA 2015 EIS restriction on not being an existing shareholder can easily be met by transferring any non-EIS shares into the name of a spouse. However, the provision can catch unwary EIS investors who buy out a fellow investor from the first EIS round and are then ineligible for relief in a subsequent EIS issue.

The ban on preferential rights for SEIS/EIS shares only covers being paid in advance of other shareholders, it does not prohibit one class of shares being paid a higher dividend. On the other hand, for Entrepreneurs’ Relief the existence of ‘special shares’ with high nominal values and high voting rights in order to trigger the 5% limit could fall foul of the DOTAS Financial Products Hallmark.

David also stressed the importance of liaising with other advisers to ensure that their actions do not inadvertently prejudice reliefs. For example, on a company reaching the stage of an IPO, lawyers will frequently advise placing a clean holding

company on top of the existing one through a share for share exchange. However, if the existing company has EIS shareholders this risks compromising their reliefs.

Turning to practice matters, Charlotte Ali and Jane Mellor from the CIOT looked at the new rules for client due diligence. The tax profession is considered to be high risk for money laundering and terrorist financing, with professional services being seen as a crucial gateway for criminals trying to hide the source of their funds.

The 2017 Money Laundering Regulations have introduced a requirement for firms to have a ‘whole firm’ risk assessment. This cannot just be a ‘tick-box’ exercise, it needs to take into account the types of client, the types of transactions and the geographical locations in which the firm operates.

Similarly, customer due diligence must be tailored for the type of client and business being taken on. If the client is running a cash business, this may require further investigation to ensure that it is not being used for money laundering. While it is possible to use simplified due diligence in appropriate cases, it will be up to the member to justify its use and to have the records to show that it was appropriate.

Traditionally, the Cambridge residential conference has been the time to look at the Budget, with one unlucky lecturer pulling the short straw of having to prepare a talk sometimes within just a few days of the speech. The Finance Act has previously been the preserve of the September conference at Warwick University. The coverage will presumably be reversed in future, but the chaotic legislative timetable of the past 12 months left Robert Jamieson with the unenviable task of lecturing on the rather anaemic Finance Act 2018.

That, however, is not a problem for a lecturer as experienced as Robert. He pointed out some useful ways in which the £1000 property allowance could be used – renting out a car parking space at your home, for example, especially if you live near a sporting venue such as Wimbledon. He also noted that the promised new exemption for employers that provide electricity for employees to charge their electric cars was surprisingly omitted from the Act – apparently the government have told the ATT that it will be included in Finance Act 2019 and made retrospective.

A complex set of rules has been inserted as ss 87D-87P TCGA 1992 to prevent gains being washed out of offshore trusts by routing payments through non-UK residents or remittance basis users. Robert gave a simple example where a trust distributes £200k to A, £130k of which is matched with trust gains. A is UK resident, but a

remittance basis user, and does not remit any of the £200k. If A were then to gift £150k to B, a UK resident, £70k (£200k–£130k) would be treated as capital, but the remaining £80k would be treated as trust gains attributed to B.

Finally, Robert pointed out the strange effect of the new rules providing that the allocation of profits shown in a partnership return is to be conclusive. While there is a procedure for challenging this, what is a partner meant to do in the meantime if he or she disagrees with the allocation? It appears that this amount will have to be included in the individual's return, even though the partner believes it is wrong. This makes a mockery of signing that the return is complete and correct.

Following his lecture, Robert then led a short appreciation of the life of former CIOT President Chris Jones, one of the organising committee for the conference, who died suddenly earlier this year at the age of 50. Giles Mooney gave what he insisted was 'not a eulogy' because he couldn't believe Chris was no longer with us, a sentiment which was shared by all those who had known him.

To close the Saturday sessions, Pete Miller of The Miller Partnership and Martin Roberts the head of HMRC's Business, Assets and International (BAI) Clearances Team looked at the do's and don'ts of clearances. The team get upwards of 10,000 clearance applications each year, so Martin advised that sufficient time should be given. Although the aim of replying within 15 days of receipt is met in nearly 90% of cases, delays can occur, especially in the run up to the end of the calendar and tax years. Applying by email, and with a request for the reply by email, should help speed up the process, but check in advance for the wording HMRC needs to see confirming that the client accepts the confidentiality risks of email.

The restricted nature of some clearances was highlighted by both Pete and Martin. In particular, the clearance under s 138(1) TCGA 1992 is only about the bona fide commercial nature of the transaction, not that a valid reorganisation or reconstruction will be achieved. While the clearance team have said they will look at the issue, and if necessary refer it to senior colleagues, it is unclear to what extent (if any) a taxpayer or adviser could rely on the absence of any caveat in the clearance letter.

On Sunday morning, Bob Trunchion of Macintyre Hudson dealt with the practical uses of trusts. He highlighted the problem for RNRB when estates contain business or agricultural property. Although the appropriate IHT relief will take the value out of

the estate for calculating the IHT on death, the RNRB taper is calculated by reference to the value of the estate before reliefs. Bob's answer was to create an interest in possession (IIP) trust for the benefit of the children, and to put an appropriate amount of the business property into it. This can be created by will on the death of the first spouse, or even a gift by the second spouse after the first death – as explained in Lucy Obrey's lecture, there is no seven-year cumulation for RNRB taper.

Bob also had some techniques for families with adult children about to go to university. The most straightforward was to make a gift of an existing investment property standing at a gain to the child by using a trust. The gain is then held over on its way into the trust, and at any time after three months the property can be appointed out to the child, also with a hold over of the gain. The most aggressive suggestion was to set up a £100 IIP trust for the child and for the parents to lend it the money to buy a property rather than the child renting a house share or paying hall fees. The IIP would later be defeated and reversion would be to the parental settlors, but the 3% SDLT surcharge they would have incurred had they bought the property outright would have been avoided. Robert cautioned, however, that the anti-avoidance rules for SDLT could be brought into play.

Karen Eckstein of Womble Bond Dickinson advised delegates on how to protect themselves from professional indemnity claims, relating some horror stories from her own practice advising on professional negligence. She stressed the importance of thinking not just about what you are taking responsibility for, but also what you are not doing, and the importance of spelling that out in the engagement letter. Ultimately, spending some time devising appropriate systems to handle engagement letters, file reviews etc. is the way to provide protection.

Finally Malcolm Greenbaum ran through some cross-border VAT issues, looking at the place of supply of both goods and services. There is a particular problem where a UK customer orders from a UK supplier, but the goods are sourced from a supplier in, say Hong Kong, and delivered directly to the UK customer. A good rule of thumb, Malcolm said, is to consider who is responsible for the importation of the goods into the UK. If the answer is the UK customer, then the supply is probably made by the UK supplier in Hong Kong, and is therefore outside the scope of UK VAT (until the import occurs). If the UK supplier is responsible for the import, the supply is made in the UK, and the supplier will charge VAT (and recover the import VAT that they pay).

And so another conference ended. The greater emphasis this time on practice matters probably reflects the added complications of running a practice in the current regulatory climate. If you are feeling the strain of getting to grips with all these rules, as well as keeping on top of all the changes in tax, perhaps you ought to consider coming to the residential conferences in future?