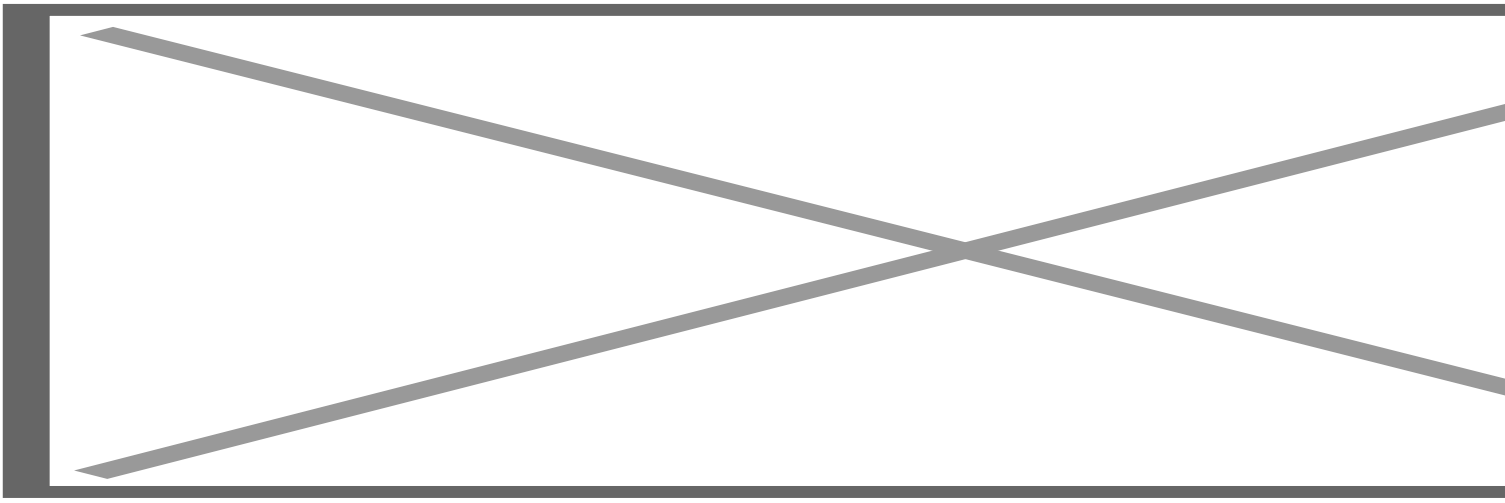
Chair's view, Issue 1

Personal tax | Tax voice



04 April 2016

As our members are well aware, this has been a busy few months for those whose practice areas cover non-residents, non-domiciliaries or trusts.

Despite giving assurances in the light of 2008 changes to the remittance basis that there would be no further substantial changes to the taxation of non-domiciliaries, there have been significant proposals for change in that field.

The most recent of these, and which has kept the Committee very busy, relates to the introduction of a deemed domicile concept for the purposes of all taxes together with proposals to remove excluded property status of UK situate residential property held through offshore structures. This is dealt with by John Barnett later in this edition and I shall not stray into the details of the proposals here. However, it is worth noting the process by which these proposals are being progressed: rather than being handed a *fait accompli*, these proposals have been the subject of extensive informal consultations between the Government (HM Treasury and HMRC) and the representative bodies. There has been constructive dialogue on issues ranging from the overall shape that the proposals may take (it being made clear that the policy underlying the proposals was not up for discussion) to the more detailed discussions on the need for precise and non-ambiguous statutory language to achieve the desired outcome. This level of engagement on the part of HM Treasury and HMRC is very welcome. It is hoped that it will in the near future produce draft legislation dealing with all aspects of the proposals so that the CIOT can not only provide constructive input on the drafting but so that it can identify any areas which are not, or not adequately, covered by the draft legislation.

Another area of ongoing interest is the saga of HMRC's change of position on debt collateral and the remittance basis. Members will recall that Manual RDRM33170 had indicated that certain uses of relevant foreign income and foreign chargeable gains ("FIGs") would not amount to a taxable remittance of those FIGs. In August 2014, HMRC changed their position and required structures that were affected to unwind within approximately 20 months.

This committee was closely involved in seeking to clarify the many areas of concern arising from this abrupt change of position by HMRC – not least whether any grandfathering of structures set up in reliance on HMRC's previously stated position would be available. Ongoing dialogue, via correspondence and meetings, finally resulted in a statement published in November 2015. As members will be aware, this does not address all the concerns and leaves, inter alia, the position of revolving loans and superfluous security unresolved. This committee has continued to liaise with HMRC to resolve the outstanding issues.

This is sadly not the only area in which an unheralded and abrupt change of HMRC position remains unresolved. Members may be wondering what is HMRC's current position in relation to specialty debts. The committee met with HMRC in late 2015 to press for progress in this area. Members will be heartened to hear that HMRC were receptive to the committee's comments. For example, it was emphasised that there was no warrant to introduce a test for situs of a speciality debt which was based solely or largely on the location of the debtor. Further, HMRC were made aware that the impact of the issue of situs of a specialty debt was not limited to the inheritance tax context but extended to the remittance basis as well. There is, we are assured, renewed interest within HMRC in ensuring that this issue is clarified. The likelihood is that this clarification may well form part of the inheritance tax / excluded property package of measures to be included in the Finance Bill 2017.