Analysis

Private client review for March

Speed read

This month, we consider some of the key announcements in the Spring Budget relevant to private clients, including various changes to the taxation of property transactions and the abolition of the non-dom regime. We also review three recent cases which highlight some interesting procedural points in the context of challenging HMRC enquiries: in *Hunt*, HMRC successfully applied for the taxpayers' appeals to be stayed behind another group of cases which involved the same key point; *Smith* serves as a warning that deadlines should be diarised to avoid late filings; and in *Brown*, the Court of Appeal confirms that HMRC could rely on an argument which they had not presented to the FTT.

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The Spring Budget 2024

On 6 March, the Chancellor presented his second Budget. Despite recent warnings from the Institute for Fiscal Studies that 'the economic case for tax cuts ... is weak', with a general election on the horizon, the Chancellor focused on a number of measures intended to differentiate his approach from that of Labour. As readers will know, one of the headline announcements was to make further cuts to the rates of NICs. Of course, any reduction in tax needs to be funded, so the Chancellor also announced various revenue-raising measures. Key points include the following.

CGT rate on disposals of residential property

Currently, unless PPR relief applies, residential property gains (along with profits on carried interest) are taxed at a higher rate than gains in respect of other assets. The current rates are 18% for residential property gains falling within the basic rate band and 28% thereafter (as compared to rates of 10% and 20% for gains arising in respect of other assets).

However, the Chancellor announced in his Budget that the higher rate of 28% would be reduced to 24% in respect of gains arising on residential property disposals that exchange on or after 6 April 2024. The lower rate will remain at 18% (and these changes also do not affect the 28% rate for carried interest).

SDLT: abolition of Multiple Dwellings Relief

Under current rules, property buyers are able to claim relief from SDLT where multiple dwellings are purchased as part of a single transaction (or as part of a series of linked transactions). Multiple Dwellings Relief (MDR) operates by fixing the SDLT rate by reference to the average chargeable consideration, rather than the aggregate chargeable consideration (subject to a minimum rate of 1% of the total consideration).

The government published a consultation in 2021 which suggested that 'the current rules are leading to potentially unfair outcomes, incorrect claims, or abuse of the rules' and proposed various options for limiting the application of MDR. A change to the MDR rules had therefore been expected for some time.

However, Budget announcements confirm that MDR will be abolished entirely for transactions (in respect of properties in England and Northern Ireland) completed after 31 May 2024 (with transitional rules available for contracts exchanged on or before 6 March 2024).

Taxpayers should also be aware that, in addition to suggesting changes to MDR, the 2021 consultation had also considered reforms to mixed property relief. However, the consultation response, published on 6 March, notes that 'HMRC continues to have success in challenging spurious claims to mixed-property treatment' and so 'no other changes to the rules for mixed-property are planned.'

Abolition of the Furnished Holiday Lettings regime

The Chancellor announced that the Furnished Holiday Lettings regime would be abolished from April 2025. Under the current regime, furnished holiday lettings are treated as a trade and so property owners are able to claim deductions, capital allowances and capital gains tax reliefs which would not be available to property investment businesses. From April 2025, these benefits will be lost.

Non-doms

For some time, a key policy of the Labour Party has been to abolish the non-dom regime, which on recent HMRC statistics published in Summer 2023 has raised £12.4bn in direct taxes and NICs from a population of about 78,700 taxpayers. However, until recently, there have been no signs that this plan would be taken up by the current government. Indeed, at a Treasury Select Committee session in November 2022, the Chancellor expressed concerns that reforms 'would cost us more money than it would make us'. However, on 6 March, the Chancellor announced the abolition of the non-dom regime, to be replaced with a new residence-based regime, taking effect from 6 April 2025 (which falls after the forthcoming general election, so a new government could change the precise nature of the proposed reforms).

Taxpayers will qualify for the new regime if they have been non-UK tax resident for at least ten years (mirroring the qualifying period in other countries' regimes), regardless of their domicile status, with the regime applying for their first four tax years of UK residence.

The historic 'remittance basis' is to be scrapped entirely; instead, non-UK income and gains can be brought to the UK tax-free for as long as the individual qualifies for the new regime (i.e. up to four years). It also appears that – unlike the remittance basis regime – there will be no annual charge to access the regime. Once a taxpayer ceases to qualify for the new regime, they will pay UK tax on their worldwide income and gains on the arising basis (as is currently the case for UK residents who are also UK domiciled or deemed domiciled).

From 6 April 2025, protected settlement status (which currently protects non-domiciled settlors of non-UK trusts, established before they become deemed UK domiciled from an immediate tax charge on profits arising within the trust structure once they are deemed UK domiciled) is also to be removed from all trust structures (including those already in existence). In future, for as long as the settlor qualifies for the new four-year regime, they will not pay UK tax on the income and gains of the trust. However, once they are no longer eligible for the new regime, they will be obliged to pay UK tax on all profits arising within the trust.

The government recognises that these reforms 'represent a significant change' for existing non-doms and has confirmed that a number of transitional arrangements will be made available, including:

- a 50% reduction to tax on non-UK income for non-doms who move from the remittance basis of taxation to the arising basis on 6 April 2025 (and who do not qualify for the new four-year regime), for 2025/26 only;
- a rebasing election, i.e. an opportunity for individuals who have previously claimed the remittance basis of taxation (and are neither UK domiciled nor deemed domiciled by 6 April 2025) to elect to rebase personally-held assets to their value at 5 April 2019 (the significance of the date is so far unclear); and
- a 'Temporary Repatriation Facility' which allows non-doms who have previously been taxed on the remittance basis to remit foreign income and gains that arose before 6 April 2025 to the UK at a reduced tax rate of 12% during 2025/26 and 2026/27.

IHT

Currently, liability to IHT depends on the taxpayer's domicile status and the location of the asset in question. However, the Budget announced an intention to move to a residence-based regime for IHT from 6 April 2025. Although there will be a consultation on how this is best achieved, it is suggested that an individual's worldwide assets would fall within the scope of UK IHT once the individual has been UK resident for ten years and will remain as such for ten years after the individual ceases UK residence. Budget papers state, however, that there will be grandfathering provisions for excluded property trusts which are established by non-doms prior to April 2025.

Tax litigation: procedure matters

The recent cases of *Hunt and others v HMRC* [2024] UKFTT 78 (TC), *Smith v HMRC* [2024] UKFTT 101 (TC) and *Brown v HMRC* [2024] EWCA Civ 92 highlight interesting procedural points in the context of challenging HMRC enquiries.

Staying appeals

Hunt serves as a reminder that:

- it is not uncommon for HMRC periodically to dedicate its resources towards fighting cases which relate to the same key issue; and
- the FTT has the power to stay appeals and put them on hold until it has reached a decision on (an)other case(s) which involve common or related issues.

Here, the taxpayers were appealing against assessments raised under the transactions in securities regime. HMRC were successful in applying for the taxpayers' appeals to be stayed behind another group of cases which, although involving different fact patterns, would consider the same key point. HMRC argued that:

- the earlier appeal would set out the relevant principles regarding the key issue;
- this would be of material assistance in resolving the present case (which may even become capable of resolution without litigation); and
- this would avoid the possibility of multiple (potentially conflicting) first instance decisions on the same issue.

The taxpayers objected to HMRC's application because this would involve HMRC 'cherry picking and choosing (presumably) the weakest case from the taxpayer's perspective to bring before the tribunal'. They also expressed concern that the earlier grounds of appeal may differ from those in the present case.

However, in granting the application, the judge agreed with all of HMRC's arguments. He also disagreed that HMRC were cherry picking (had the appellant's counsel been available for a hearing at an earlier date, this case would have been heard before the earlier appeal) and concluded that the chances of the earlier appeal not substantively considering the key issue were 'infinitesimally small'.

This case highlights the need to manage clients' expectations if their case involves an issue which HMRC are focusing on at that time, as HMRC may be corralling several related cases through the tribunals and this may have an effect on the timescales involved to resolve the matter. Another recent example of such treatment has been in the realm of the high income child benefit charge, where several cases were stayed behind *HMRC v Wilkes* [2021] UKUT 150 (TCC), as covered previously in this column.

Filing deadlines

In *Smith*, the taxpayer appealed against HMRC's decision that their property acquisition did not qualify for (the soon to be abolished) multiple dwellings relief from SDLT. However, since the taxpayer's application was submitted 10 months late, the FTT refused to grant permission to appeal.

The FTT confirmed that the starting point is that permission for a late appeal should not be granted. The FTT will consider the length and reasons for the delay, as well as the need for litigation to be conducted efficiently. This is an issue which comes up repeatedly, regardless of the tax concerned. For example, see our discussion, in the November 2023 edition of this column, of the strike-out of a late appeal in a domicile claim context in *HMRC v Breen* [2023] UKUT 252 (TCC).

These cases serve as a warning to clients and practitioners that deadlines should be diarised to avoid late filings.

'It is for the judge to decide ... what the law is'

In *Brown*, the Court of Appeal rejected the taxpayer's appeal against earlier decisions that they were liable for SDLT on the acquisition of a property via a company (having used a marketed scheme to claim sub-sale relief). From a technical perspective, the outcome is unsurprising.

However, what is interesting is the taxpayer's stance that HMRC could not rely on an argument which they had not presented to the FTT. The judges disagreed, noting that as the argument was a purely legal point, it did not require any further fact finding and it is the duty of a judge to decide what the law is and to apply it to the case's facts (a point taken as far as the House of Lords historically, and therefore one which litigants should be wary of testing too far). ■

For related reading visit taxjournal.com

- Spring Budget 2024: Private client perspective (D Lawrance, 8.3.24)
- What the Budget means for non-UK resident trusts (E Hayes, 15.3.24)
- Cases: *P Hunt and others v HMRC* (5.2.24)
- Cases: *M Brown and another v HMRC* (13.2.24)
- Cases: Other cases that caught our eye (*Smith*, 15.2.24)