Briefing

Private client review for April

Speed read

This month, we start by looking at key points for private clients in respect of the chancellor's recent Spring Statement. The Economic Crime (Transparency and Enforcement) Act 2022 received royal assent on 15 March, introducing an overseas entities register. HMRC has announced the end of a temporary relaxation, introduced during the pandemic, relating to the taxation of non-UK resident employees who find themselves stranded in the UK. The practical implications of the Supreme Court's decision in *Tooth* last year are now being felt, as demonstrated by the Upper Tribunal's decision in *Hargreaves*. Finally, there is victory for the taxpayer in *Yerou*, in which the First-tier Tribunal confirmed the limits to HMRC's power to demand additional information from the taxpayer by way of information notices.

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Spring Statement 2022: key points for private clients

On 23 March, the chancellor delivered his first Spring Statement since the pandemic, against the backdrop of a cost of living crisis and a turbulent international situation. Under pressure to prove he is a 'tax-cutting Conservative', Mr Sunak announced:

- an increase to the threshold at which national insurance becomes payable, to take effect from July 2022; and
- a reduction in the basic rate of income tax from 20% to 19%, taking effect from April 2024.

However, these tax 'cuts' should be taken with a pinch of salt, given that implementation of the 1.25% health and social care levy is still going ahead in April, and that the 1% income tax rate drop (scheduled to come into force shortly before the next general election) is subject to certain fiscal principles being met. Assuming, however, that the 1% reduction goes ahead, charities will be pleased to note that a three-year transition period for gift aid relief will apply, so that charities are able to benefit from relief at 20% until April 2027.

Conspicuously absent were any major announcements relating to CGT or IHT. In November 2021, the government responded to reports prepared by the Office for Tax Simplification (OTS) on possible reforms to CGT and IHT. A number of the OTS' recommendations relating to CGT were accepted, but the government decided against any changes to IHT at that time. However, the Spring Statement certainly does not provide private clients with reassurance that future reform in these areas is off the table. It notes that the tax system contains over a thousand tax reliefs and allowances which, whilst playing an important role, can be costly and complex. The government is therefore planning to consider possible reforms ahead of 2024.

Finally, the Statement confirms that the government is going to invest £161m over the next five years to increase compliance and debt management capacity in HMRC, expanding its resource to scrutinise taxpayers' affairs.

The overseas entities register: transparency in land ownership

A proposal to introduce an 'overseas entities register' was initially announced in March 2016 due to concern over a perceived lack of transparency in relation to the ultimate owners of land in the UK where such land is registered to an overseas entity. A draft Bill was published in 2018, but progress then stalled. However, prompted by the crisis in Ukraine, the Economic Crime (Transparency and Enforcement) Act 2022 (the Act) received royal assent in the early hours of 15 March following an extraordinarily speedy two-week passage through Parliament. Part 1 of the Act – not yet in force but expected imminently – introduces the overseas entities register.

This requires the registrar of companies for England and Wales (i.e. Companies House) to maintain a register containing information about any overseas entity (which includes a body corporate, partnership or other entity which is a legal person in the relevant jurisdiction) which is the registered owner of a 'qualifying estate' (which, in England and Wales, includes a freehold interest or a leasehold interest of more than seven years).

Existing owners of qualifying estates will be required to apply for registration before the end of the 'transitional period' (a period of six months after Part 1 of the Act comes into force). Any new acquisitions of qualifying estates by overseas entities will not be registered unless the entity in question first registers on the overseas entities register.

In addition to basic details about the overseas entity itself, information about its beneficial owners must also be provided. A person is a 'beneficial owner' of an overseas entity if it satisfies at least one of five conditions relating to share/voting ownership or the ability to exercise some sort of control over the overseas entity. Where land is held through a chain of companies, the general rule is that the overseas entity is required to look up through the structure and report its ultimate beneficial owner. Where the registrable beneficial owner is a trustee, certain additional details must be provided relating to beneficiaries, settlor and anyone with control over the trust (for example, a protector).

In general, the information on the register is publicly available, although (in line with HMRC's trust registration service principles) most trust information will only be available to HMRC.

In readiness for the start of the transitional period, advisers should assist clients with identifying any UK land which is held within their structures by overseas entities (including land which is held by a nominee company or within a trust structure by a corporate trustee). In common with other transparency initiatives, the issuance by an entity to its assumed beneficial owners comes with penal sanctions for non-compliance.

Note that, as currently drafted, this legislation will produce a register containing information about the beneficial owners of the overseas entity which holds the land, rather than the beneficial owners of the land itself. Often these people will be the same but this will not always be the case (for example,

where the overseas entity is holding the land as nominee). This is a deficiency which was highlighted to the government during the passage of the Bill through Parliament, but it remains to be seen whether this will be corrected in the future.

Is covid-19 over? HMRC seems to think so

In 2020, as many non-UK resident employees found themselves stranded in the UK due to covid travel restrictions, HMRC issued guidance confirming not that it would treat such persons as non-resident but that they would not seek to tax such individuals on earnings for duties performed in the UK between the date of their intended departure and their actual date of departure, provided that they were taxed in their home state.

In HMRC's recent *Agent update* (April 2022), it was announced that, in light of travel restrictions and self-isolation requirements having been largely withdrawn, this relaxation would end on 5 April 2022. After this date, any days spent working in the UK by a non-UK resident will be treated as days on which they perform duties in the UK (and taxed as such), even if the individual in question is prevented from leaving the UK as a result of covid-related circumstances.

This is in line with a general movement towards ending temporary relaxations which were introduced in response to the pandemic. However, it should be noted that HMRC guidance introduced in March 2020 in relation to the statutory residence test and when days spent in the UK can be disregarded as a result of covid-related 'exceptional circumstances' remains in place. Advisers should, however, keep a watchful eye out for the possibility of such guidance being withdrawn in the future.

New lease of life for 'stale' discovery assessments

Discovery assessments have been the focal point of many disputes before the courts recently, culminating in the much-discussed Supreme Court decision last year in *HMRC v Tooth* [2021] UKSC 17, in which the concept of staleness was rejected as a defence to a discovery assessment by HMRC.

The practical implications of *Tooth* are now being felt. In its 2019 decision in *Hargreaves v HMRC* [2019] UKFTT 244 (TC), the First-tier Tribunal (FTT) had found a discovery assessment to be invalid because it had become stale (the discovery was made more than three years before the assessment was issued). However, in February this year, the Upper Tribunal (UT) allowed HMRC's appeal against the FTT's decision, noting that staleness is no longer a valid reason to disallow a discovery assessment ([2022] UKUT 34 (TC)).

To recap, Mr Hargreaves had submitted a self-assessment tax return for the 2000/01 UK tax year (i) on the basis that he was not resident or ordinarily resident in the UK in that year; and (ii) leaving the CGT pages blank. Years later, a newspaper article drew HMRC's attention to the fact that Mr Hargreaves had spent a significant number of days in the UK in the relevant year. HMRC therefore issued a discovery assessment in 2007. Mr Hargreaves challenged the discovery assessment, arguing that (i) it was stale; (ii) a hypothetical HMRC officer could have been alerted to an understatement of his CGT liability using his self-assessment tax return; and (iii) he had not been careless in filing his return as a non-resident.

The FTT found for Mr Hargreaves on the first point but not on the other two; however, the finding of staleness was determinative. In the UT, Mr Hargreaves argued that the FTT's decisions on the other two points were obiter as a result.

The UT disagreed with this argument and found that the FTT's decisions on the other issues should, in principle, stand. Although they went on to overrule the FTT on the carelessness issue, they nonetheless found for HMRC overall on the basis of the second point.

This shows the significance of the decision in *Tooth*. Taxpayers who have previously relied on staleness to override other provisions on discovery assessments will now be exposed to assessments if there is even one valid ground on which, absent staleness, the assessment could have been raised.

It also provides useful clarification on the nature of 'contingent' decision-making by the FTT: such findings should not be seen as mere obiter, easily reversed on appeal, but as a substantive part of the factual decision which can only be overturned on a point of law.

Information notices: a victory for the taxpayer

In *Yerou v HMRC* [2022] UKFTT 79 (TC), with HMRC and the taxpayer seemingly at daggers drawn, the FTT allowed an appeal against information notices issued by HMRC.

The taxpayers were a married couple who owned shares in a company in whose management they were involved. Shares were transferred by the wife to her non-UK resident father-in-law, who received dividends. He made loans to the couple and paid some school fees for their children.

HMRC opened an enquiry on the premise that either the transfer of assets abroad rules or the settlements legislation applied, and issued information notices, requesting extensive financial information including several years' worth of personal bank statements. Mixing and matching powers, they also issued discovery assessments in respect of various tax years. One discovery assessment was issued before the relevant information notices, and the rest were issued before any information pursuant to those notices had been supplied.

The taxpayers appealed separately against the discovery assessments and the information notices. The appeals in relation to the information notices fell to be decided first.

HMRC argued that (i) its enquiry had not finished and therefore the normal powers to require information in the course of an enquiry applied; and (ii) the account statements and related information were reasonably necessary to test whether the other information provided by the taxpayers understated the possible tax liabilities.

The FTT disagreed, finding that, since proceedings in relation to the discovery assessments were already underway, HMRC had clearly already formed a view on the liabilities owed by the taxpayer. The additional information was not therefore reasonably required. Since the taxpayers were clearly determined to take the substantive proceedings to the tribunal, such that the disclosure of the additional information did not carry a reasonable prospect of achieving an out-of-court agreement, it would not be proportionate or helpful to prolong the substantive proceedings by requiring the taxpayers to provide it.

Although the decision was in the context of quite specific facts, taxpayers may be relieved to see a limit imposed on HMRC's ability to continue to demand further information where extensive disclosures have already been made and discovery assessments issued.

At the risk of overstating the conclusions of the case, it may be that, going forward, the issue of discovery assessments should be regarded as the end of the information-gathering phase of a dispute with HMRC. ■

- Unchained melody: the chancellor writes his own tune (C Sanger, 25.3.22)
- The new Economic Crime Act: an update (Y Hazara, 16.3.22)
- Discovery following *Tooth*: what should advisers do? (H Adams, 8.6.21)