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Personal Tax

Property owned by married couples or civil partners (Lecture P681 – 9.14 minutes)

HMRC have updated their manuals to reflect their current policy on the taxation of property held jointly by married couples or civil partners and in particular the use of form 17.

Income from property held jointly by married couples and civil partners is treated as beneficially owned by the individuals in equal shares. Consequently they are taxable on the income 50/50. This rule applies even if the individuals own the property in unequal shares. It can be disapplied only by a declaration on form 17.

A form 17 declaration must be made jointly. If one spouse or civil partner does not want to make a declaration both must accept the standard 50/50 split for jointly held property.

A married couple or civil partners who have separated would not be subject to the 50/50 rule, as it applies only to couples living together. They will be taxed on their actual entitlement in any event, and so cannot make a form 17 declaration.

Individuals other than spouses or civil partners cannot make a form 17 declaration, for example siblings. The 50/50 rule does not apply to them. Income is attributable to them on the basis of their entitlement.

A couple do not have to opt for a different split. A couple could accept the standard 50/50 split for jointly held property, even if one spouse or civil partner holds 90% of the capital and income and the other spouse or civil partner holds 10%.

A couple can make a different choice for each asset. In some cases they can choose to be taxed on their actual entitlement; in others they can accept the standard 50/50 basis.

A form 17 declaration must correctly state the individuals' beneficial interests in

- the jointly held property and
- the income arising from the property

A form 17 declaration can be made only if the individuals are beneficially entitled to the income in unequal shares. This could be 100/0 or 60/40 or anything other than 50/50.

Married couples and civil partners do not have a general option to have income taxed in any way they like. They can depart from the standard 50/50 split for tax purposes only where

- each spouse or civil partner is in fact entitled to a share other than 50/50 in the property and
- the share that a spouse or civil partner has in the income is the same as their share in the property

The couple should submit evidence of beneficial ownership along with the declaration. This applies to all types of property. Form 17 declarations will be considered by HMRC in the light of the evidence submitted.

A declaration can be accepted only if made on form 17. The taxpayers can download a copy from the HMRC website.

The declaration sets out the property and income they want the declaration to cover and states the interest each spouse or civil partner holds in

- each item of property
- the income produced by each item.

Once a declaration is made it remains in force until the couple's interests in the property or income change, or they stop living together as a married couple or as civil partners of each other.

No split other than 50/50 can be accepted until a satisfactory declaration is received.

Income from property included in the declaration is split in the new way from the date of the declaration (which is the date the declaration was signed by the last spouse or civil partner to sign) provided the notice of declaration reaches the Inspector within 60 days of the date it was signed.

For example, the husband signs on 10 June 2010, and the wife signs on 20 June 2010; the declaration applies to income that arises on and after 20 June 2010 provided the declaration reaches the Inspector within 60 days of 20 June 2010.

A declaration that is late is invalid - it has no effect at all. The couple must make a further declaration and send it to the Inspector within the 60 day time limit if they want income to be split on the basis of actual entitlement. Only income that arises after the date of the declaration is covered.

The split of income for tax purposes produced by a valid declaration goes on running for all later years without any further action until one of the following events happens

1. one spouse or civil partner dies
2. the couple separate permanently
3. the couple divorce or the civil partnership is dissolved (where the couple have not already separated permanently)
4. the beneficial interest of either spouse or civil partner in either the property or the income it produces changes; for example, this can happen if one spouse or civil partner transfers any part of his/her beneficial interest to the other or to a third party.

The couple cannot simply choose to end the split of income which results from a declaration; it goes on running until one of the four events listed above occurs. But even the smallest change of interest (4 above) stops the declaration running. The standard 50/50 rule then applies again unless the couple make a fresh declaration.

After death, permanent separation or divorce or dissolution the income is split in the normal way; that is, the person who is beneficially entitled to the income is taxable on it.

When Form 17 is submitted HMRC will check that the couple have submitted adequate evidence of their claim that the property is held jointly in unequal shares. If they have not, they may need to ask the couple to provide further evidence, or consider referring the case to HMRC Trusts & Estates Technical Edinburgh.

Gaines-Cooper loses Supreme Court appeal

The Supreme Court, by a four to one majority, dismissed the taxpayer Gaines-Cooper's claim that he ceased to be UK resident around 20 years ago.

In a case heard jointly with another party, Davies and another, the taxpayers argued that HMRC's IR20 booklet gave them the legitimate expectation that the department would treat them as not resident or not ordinarily resident in the UK.

The High Court refused the taxpayers permission to apply for judicial review of the determinations by HMRC that they were resident and ordinarily resident in the UK in the relevant years. The Court of Appeal granted them permission, but dismissed their substantive applications; they appealed to the Supreme Court.

Mr Davies had argued that, according to IR20, an individual who left the UK for at least a whole tax year would be considered non-resident, provided visits totalled less than six months in any one year and averaged less than 91 days each year.

Mr Gaines-Cooper maintained that if an individual lived abroad for at least three years and satisfied the 91-day condition, there was no need to consider whether he had made a distinct break in the pattern of his life in the UK.

The Supreme Court ruled that IR20, when read as a whole, did not support the taxpayers' contentions. Although the guidance could have been clearer as to how to achieve non-resident status, it did inform taxpayers that a distinct break was necessary. For example, property retained in the UK should be used for visits only, not as a place of residence.

The judges said there was insufficient evidence to show that it was settled practice. The taxpayers could not produce evidence to show the practice was so well-established as to amount to a commitment by HMRC to abide by it.

Lord Mance, dissenting, said it was the Gaines-Cooper's intention regarding the duration of his absence, rather than the quality of any absence, that mattered.

The judge added it would be remarkable if there were a requirement for 'a distinct break' from life in the UK when no such requirement was clearly expressed and other factors, including the day-count proviso, militated against such a requirement.

The Supreme Court dismissed the taxpayers' appeals.

Non-residence and full-time work abroad

HMRC has provided a written statement on the position of individuals who had been forced to return to the UK as a result of the 'exceptional circumstances' arising from the political unrest in the Middle East:

'HMRC statement on full-time work abroad
In March of this year HMRC issued a statement clarifying the position on UK duties for those who are not resident because they are working full time abroad. We have now been asked about the impact of such duties on those who are not resident because of full time work abroad and who have returned to the UK temporarily because of the political situation in the Middle East.

'The following applies to those people who have returned to, or remained in, the UK following FCO advice and relates to those countries where HMRC has confirmed that exceptional circumstances apply. This is Tunisia, Libya, Egypt, Syria, Bahrain and Yemen.

'2010/11 – because the issues in those countries arose towards the end of the tax year, HMRC will accept that individuals who are temporarily brought back to the UK, and who have the intention of returning to their employment abroad, will not have their residence status affected by the duties undertaken in the UK during the period of exceptional circumstances.

'2011/12 – given the much longer period that exceptional circumstances may potentially apply for this year, duties in the UK may mean that those affected are no longer working full time abroad. During 2011/12 we would expect that the statement on full time work abroad made on 31 March 2011 would in general apply to UK duties and that HMRC will therefore:
- Normally not consider any case where UK duties were undertaken in fewer than 10 days.
- Look at other cases in light of their facts and circumstances.

'HMRC said that if anyone felt that this approach would lead to unfairness or hardship for people who have had
to return temporarily to the UK because of the political situation abroad, they should let them know so that they can consider the position further.'

'This statement may affect the residence position in 2011/12 of those individuals who were previously non-UK resident under the FTWA rules and have returned to the UK because of exceptional circumstances. If they undertake more than 10 days of substantive duties in the UK in 2011/12 they may no longer be considered as working full-time abroad.

'We would remind you that any individual who is still in the UK at 5 October 2011, having arrived before 5 April 2011, will be resident in the UK under the 183 days rule.'

Taxline, October 2011

Update on the UK/Swiss Tax Agreement

The agreement between Switzerland and the UK was signed in London on 6 October 2011.

Who is covered?

A 'relevant' person is an individual resident in the UK holding a 'relevant' Swiss asset or being the beneficial owner of such an asset via a company, trust, foundation, insurance policy, nominee, agent etc. Companies conducting trading, manufacturing or similar commercial activities are excluded. In the absence of clear evidence to the contrary, interests held in joint or collective accounts will normally be apportioned according to the number of account holders. While beneficiaries of discretionary trusts are not relevant persons, it should be noted that HMRC considers that most trusts that are designated as being 'discretionary' are in fact likely to be operated as bare trusts or 'interest in possession' trusts. A company beneficially owned by a UK taxpayer, holding a UK property and providing rent free accommodation or providing the benefit of any other asset will not be covered, although the company's bank accounts and investments capable of producing investment income will be. While stocks and shares options and structural products, precious metals accounts are all considered 'relevant assets', cash, share certificates or other assets held in safety deposit boxes will not be within the terms of the Agreement. However, it should be noted that the essence of the Agreement is 'No payment, no clearance'.

Responsibility lies with the Swiss banks or paying agents to ascertain both relevant persons and relevant assets. They will be subject to audit by the Swiss Competent Authority, both in respect of the historic payment to 'regularise the past' and periodically in respect of the annual withholding tax. A report of the aggregated outcome and main findings will be made available to the UK tax authorities and may be published.

Options available to relevant persons

A UK domiciled individual must, within four months of the effective date of the Agreement (expected to be January 2013), authorise the Swiss paying agent either to disclose their details to the Swiss tax authority to pass on to HMRC, or to deduct the historic payment. The deduction will be made in the absence of authority to disclose; and disclosure will be made in the absence of funds to withhold from.

However, a non-UK domiciled individual effectively has three options. He can authorise disclosure, instruct regarding the terms of the historic deduction or 'opt out'. Naturally, if he opts out and HMRC subsequently discovers the existence of a Swiss bank account, he is at risk of criminal prosecution or the civil investigation of fraud (*COP 9*) process with up to 200% penalty on the omitted tax going back up to 20 years. Further, he cannot opt out of the annual withholding tax going forward. If such individuals are determined not to be taxed and to remain anonymous, they will need to close their accounts and transfer to another jurisdiction. However, it is to be noted that the Swiss authorities have agreed to notify HMRC of the most popular destinations to which the largest amounts are transferred. Pressure will undoubtedly be brought to bear on such territories to disclose or disgorge such clients.

Excluded persons

Those who are not covered by the Agreement include individuals who are already under investigation, whether in relation to tax fraud or a money laundering offence, or by way of a civil enquiry supported by HMRC statutory information powers, or simply as part of a project-based enquiry utilising specific third party information, HMRC has clarified that normal aspect enquiries into a taxpayer's returns, although in fact 'supported' by their statutory information powers, will not render the individual ineligible until such time as the powers are invoked. Persons engaged in systemic fraud against the tax system (eg, MTIC fraud) or holding relevant assets derived from the proceeds of crime are excluded, as will be those convicted of tax evasion or who concluded previous investigations without disclosing the Swiss assets (unless the historic payment had been made before the investigation commenced).

Regularising the past

Non-UK domiciled individuals are more favourably treated. However, the Swiss paying agent can only accept a person as non-domiciled if they are given a certificate to that effect produced by a lawyer, accountant or tax adviser being a member of a relevant professional body. HMRC has clarified that such a body would need to be able to take disciplinary action against any member found to have failed in their professional duty in this regard.

Calculating the quantum of the historic payment appears, in formulaic terms, quite complex and HMRC has promised to provide several *pro forma* calculations in its FAQs.

One key point to note is that if monies have been withdrawn from the account during the relevant period, whether to buy an asset such as a house or a yacht, or simply to pay bank charges, those funds will not be 'cleared' unless an equivalent amount is reimbursed during the interim period. HMRC currently expects the taxpayer to borrow on the security of the asset to reinvest such monies but it may be that, upon further consideration, it will allow a simple bookkeeping entry to enable the appropriate deductions to be calculated. If the individual authorises disclosure, the full name, date of birth and address are to be provided, together with the UK tax reference (if known), the name and address of the Swiss paying agent, customer reference number and the yearly account balance between 31 December 2002 and January 2013. It is naturally expected that any person authorising disclosure in this way will have already correctly completed their self-assessments or will have utilised the LDF to clear the past. If, in fact, they have done neither, the authority given to the Swiss paying agent will be regarded as a disclosure to HMRC, albeit as a 'prompted' disclosure and hence eligible for some mitigation of penalties.

Ongoing deductions

The Agreement determines the calculation of interest and other income, dividends and capital gains and requires the Swiss paying agent to deduct tax at rates of 48%, 40% and 27% respectively. Non-UK domiciled individuals who declare that they are assessable on the remittance basis will have the appropriate tax deducted from UK source income and gains and 'remittances' or 'deemed' remittances. However, if non-domicile status has not been certified, the tax rates rise to 50%, 42.5% and 28% respectively. A table of concordance will be drawn up by the respective tax authorities to give guidance on how other products such as derivatives should be taxed.

Fuller disclosure?

The Agreement to implement a withholding regime will appear surprising to those who have become accustomed to hearing HMRC press for exchange of information such as occurs under the EU Savings Tax Directive. Those within HMRC who were responsible for negotiating the terms acknowledge the difficulty of maintaining a level playing field but stress that the Agreement will compensate the Exchequer to a degree that would not otherwise have been possible. Moreover, they believe that in the fullness of time there will be further and better disclosure, at least by the time the funds need to be accessed.

Summarised from an article by Aileen Barry writing Tax Journal, 28 October 2011

Deadline for enhanced protection missed

The taxpayer was chairman of Sedgwick Marine and Advisory Group. He retired from the board in 1993 but continued to work as a consultant for the company until the end of 1999. He received two pensions: one from his employer and the other was a personal plan.

The taxpayer received information from his personal pension provider on four occasions but paid little attention to them. As a result, he failed to apply for enhanced protection of his lifetime allowance under FA 2004, Sch 36 para 12, until the deadline had passed.

HMRC refused his application, so the taxpayer appealed.

The First-tier Tribunal said ignorance of the need to do something by a certain date could, in certain circumstances, be a reasonable excuse for a late claim.

However, the tribunal judge decided that, in this instance, the taxpayer did not have reasonable excuse. The judge accepted the taxpayer may not have known about the 5 April 2009 deadline for applications for enhanced protection, but felt a reasonable individual in the taxpayer’s position would have understood from the information sent to him by his pension provider that he should at least have taken advice.

The taxpayer may not have deliberately ignored the information, but it would have been reasonable for him to have glanced through and then realised he would need to take action.

The taxpayer’s appeal was dismissed.

A Platt (TC1449)

Successful discovery relating to a FURB

The trustee of a funded retirement benefit scheme trust (FURBS) completed a 2006/07 tax return, using as a guide the return for 2005/06 submitted by a firm of chartered accountants.

The earlier return contained errors that were perpetuated by the trustee in the 2006/07 return. He also submitted the 2007/08 return, repeating the mistakes made in the previous documents.

HMRC opened an enquiry into the 2007/08 return. It resulted in an assessment based on tax payable at the trust rate.

The Revenue later issued a discovery assessment under TMA 1970, s 29 in respect of the 2006/07 return. The trustee appealed against the discovery assessment.

The First-tier Tribunal said there was nothing in the returns for 2004/05, 2005/06 or 2006/07 that would have caused HMRC to suspect there was an insufficiency. The 2006/07 return had been completed negligently based on incorrect advice given to the trustee by his professional adviser.

The trustee’s appeal was dismissed.

EA Manisty and A Manisty as trustees of the EA Manisty FURBS Trust (TC1354)

Taxability of emoluments received after year in which earned

An individual (F) was employed under a contract which stipulated that he would be paid monthly in arrears, on the 6th of each month. HMRC issued a ruling that the payment which he received on 6 April 2007 was taxable for 2007/08. F appealed, contending that it was taxable in 2006/07. The First-tier Tribunal rejected this contention and dismissed the appeal. Judge King held that the effect of ITEPA 2003 s 18(1) was that the payment was taxable when F became entitled to it, which was on 6 April 2007.

This contrasts with both *Heasman v Jordan* and *Griffin v Standish*, where the Ch D held that payments of earned income were taxable for the period in which they were earned, although they were not received until later. However in this case the Tribunal accepted HMRC's contention that the effect of ITEPA 2003 s 18(1) was that the payment in question was taxable in the year it was received, even though it related to work done in an earlier year.

E Fountain v HMRC

Agency workers

A company (T) provided temporary staff for companies which sold cosmetics at duty-free shops at airports. It did not account for PAYE or NICs on the amounts paid to the staff, which it referred to as 'consultants'. HMRC issued assessments totalling more than £3,600,000, on the basis that the effect of ITEPA 2003 ss 44-47 was that T should have accounted for tax and NICs. T appealed. The First-tier Tribunal allowed the appeal, finding that there was 'no framework contract' between T and the consultants, and that there were no written contracts between T and the cosmetics companies. The Tribunal found that the consultants had 'an unfettered right of substitution', that there was no 'contract of service', and that there was 'no obligation to render (or provide) personal service(s) within the legislation'. The Upper Tribunal upheld this decision as one of fact.

Talentcore Ltd (t/a Team Spirits) v HMRC, Upper Tier Tribunal

Changes to company car **(Lecture P684 – 11.47 minutes)**

Taxable benefit for the car

The income tax charge on the benefit of having a company car for private use has been announced for all tax years up to and including 2013/14 (indeed to 2014/15 in some cases). As such, a robust tax strategy can now be established for a range of companies and their employees so as to fully take into account the tax exposure. Care is needed to fully appreciate the impact of what are significant changes to the tax charge in some cases.

The amount charged as a benefit is based on a % of the list price of the car, graduated according to the level of the car’s carbon dioxide emissions. Business mileage levels are ignored, as is the actual private use and the age of the car. The graduation is in 1% steps for every additional 5 grams per kilometre, with a maximum charge of 35%. There was a car price cap of £80,000, but that ceased to apply from 2011/12. That means that a car costing £200,000 had an annual tax charge on £28,000 to 5 April 2011, increasing then to £70,000.

The level of CO2 emissions qualifying for the basic minimum 15% charge is 125 g/km for 2011/12. There is a lower charge of 10% of list price where CO2 emissions do not exceed 120 g/km. There is an even lower charge for 2011/12, 2012/13, 2013/14 and 2014/15 of 5% where CO2 emissions do not exceed 75 g/km. However, the latest edition of *What Car?* does not report any car within that range.

All this changes from 2012/13 with a new emissions scale starting at 10% for 76 to 99 g/km, rising by 1% per 5 g/km to the usual maximum of 35%.

The result of this needs to be appreciated in terms of a tax hike of up to 50% as shown by the table below for petrol engines (add the usual 3% for diesel).

Emissions **g/km**	**% of list price** **2011/12**	**% of list price** **2012/13**
1 – 75	5%	5%
76 – 99	10%	10%
100 – 104	10%	11%
105 – 109	10%	12%
110 – 114	10%	13%
115 – 119	10%	14%
120	10%	15%
121 – 124	15%	15%
125 – 129	15%	16%
130 - 134	15%	17%

From 2013/14 the taxable benefit % increases by 1% for a car with CO2 emissions of at least 95 g/km (the new level of "relevant threshold", replacing 100 g/km), starting at 11% at that level whereas for 2012/13 the 11% charge is at 100 g/km.

Diesel cars emit less CO_2 than petrol cars and so would be taxed on a lower % of list price than an equivalent petrol car. However, diesel cars emit greater quantities of air pollutants, and accordingly a supplement of 3% of the list price applies – e.g. a diesel car, which would give rise to a 20% charge on the basis of its CO_2 emissions, is instead charged at 23%. The maximum charge for diesel cars is capped at 35%. The 3% supplement did not apply to a diesel car that met the Euro IV emissions standard for cleaner cars, but it did so from 2006/07 if the car was first registered after 31 December 2005, and in all other cases it also does so from 2011/12.

Up to 5 April 2015 the tax charge is on NIL where the company car or van cannot produce CO2 emissions under any circumstances when driven.

For cars registered before 1 January 1998 there are no reliable sources of emissions data, so the tax charge is on a % of list price by reference to engine size. The same situation arises on cars registered after that date where there is no approved CO2 emissions figure (e.g. a grey import from outside the EC).

Engine size	***% of list price***
to 1,400 cc	*15%*
1,401 to 2,000 cc	*22%*
over 2,000 cc	*32%*

For cars over 15 years old, with a market value of over £15,000, that value is taken if greater than list price. The market value for 2011/12 is as at 5 April 2012, or the date when the car ceased to be available for private use if earlier. For classic cars with a market value of not more than £15,000 the tax charge will be low, and there is no road fund tax.

Private use fuel tax charge

The tax charge is based on the same % used in calculating the taxable car benefit which therefore takes into account supplements and discounts. The % is then applied to a fixed amount which is £18,800 for 2011/12.

Advisory fuel rates for company cars

Published guidelines are issued by HMRC. The stated aim is to save time for all concerned by setting out figures which they reckon can be used in the majority of cases

They are only advisory, and can apply where the employer reimburses the employee for fuel for business travel in a company car or where the employer requires the employee to repay the cost of fuel for private travel in a company car.

They used to be reviewed every 6 months, but more frequently at HMRC's consideration if fuel prices fluctuated by 5% from the current rate and that was likely to be sustained. However, that arrangement has changed and the rate per mile is simply reviewed four times a year instead – on 1 March, 1 June, 1 September and 1 December. The rates from 1 September 2011 are as follows:

engine size	***fuel cost per mile***		
	petrol	*diesel*	*LPG*
to 1,400 cc	*15p*		*11p*
to 1,600 cc		*12p*	
1,401 to 2,000 cc	*18p*		*13p*
1,601 to 2,000 cc		*15p*	
over 2,000 cc	*26p*	*18p*	*18p*

Contributed by Gerry Hart

Capital Taxes

Non-residential use and letting (Lecture P682 – 15.35 minutes)

HMRC updated their CG manuals in this area in April 2011. Some of the more interesting extracts are as follows:

Introduction

Section 222(1)(a) TCGA 1992 sets out that relief is available in respect of a disposal of a dwelling house or part of a dwelling house which has been used as the individual's only or main residence at some time during their period of ownership. Relief is not available under Section 222(1)(a) TCGA 1992 for any part of the dwelling house which has never been so used.

There is also a specific exclusion from relief resulting from Section 224(1) TCGA 1992 for any part of the dwelling house which has been used exclusively for a trade or for similar purposes, *see* CG64660+.

CG 64651–64659.

Part of house used for business (CG64660)

Section 224(1) TCGA 1992 states that relief shall not apply to any part of the dwelling house which is used exclusively for the purpose of a

- trade
- business
- profession, or
- vocation.

The gain on the disposal of the dwelling house is to be apportioned between the part of the dwelling house used exclusively for one of the purposes listed above and the part used as a residence. Only the proportion of the gain apportioned to the residential part will attract relief.

If, during the period of ownership, there has been a change in the part of the dwelling house which has been used for these purposes Section 224(2) TCGA 1992 provides that 'the relief given by Section 223 may be adjusted in a manner which is just and reasonable'.

64661–64662.

Part of house used exclusively for business (CG64663)

Section 224(1) TCGA 1992 only excludes from relief any part of the dwelling house which is used exclusively for the purposes of a trade, business, profession or vocation. So a room which is used partly for business purposes and partly for residential purposes will qualify in full for relief.

For example, the kitchen of a small guest-house may be used equally to provide meals for the resident owner and to provide meals for the guests. As the kitchen is not used exclusively by the owner for the purposes of the trade Section 224(1) TCGA 1992 cannot be used to restrict relief. Although a proportion of the expense of heating and lighting the kitchen, together with fuel for cooking, may be wholly and exclusively expended for the purposes of the trade and as such be deductible in computing the profits chargeable as income, it does not follow that a similar restriction should be made to the private residence relief.

Where a room has been used exclusively for the purposes of a trade, business, profession or vocation the apportionment required by Section 224(1) TCGA 1992 should be made by reference to the facts relating to the dwelling-house. Any private use fraction agreed for the purposes of computing profits chargeable as income provides a poor guide to the apportionment required by Section 224(1) TCGA 1992 and should only be used if no other evidence is available.

The exclusive use test is a stringent one and you should not usually seek any restriction to relief for a room which has some measure of regular residential use. But occasional and very minor residential use should be disregarded. For example, if a doctor keeps private possessions in a room used as his or her surgery the surgery should still be regarded as exclusively in business use.

64664–64669.

Part of house used for business: apportionment (CG64670)

How much of the total gain accruing on the disposal of a dwelling house is attributable to the residential and how much to the business parts of that dwelling house is a question to be decided on the facts of the particular case.

In a mixed property, such as a public house with residential accommodation above, the business part would be expected to be of greater value than the residential. So an apportionment based solely on the number of rooms or the floor area used for each purpose could produce an excessive amount of relief. In small cases any reasonable apportionment may be accepted. If the tax at stake is material or the apportionment appears to have been unduly weighted in favour of the residential accommodation the Valuation Office Agency should be consulted. Form CG20 should be used and the Valuation Office Agency should be asked to apportion the consideration received, as well as any deductible cost or valuation. The example at CG64674 illustrates the valuations and apportionments needed. The Valuation Office Agency will apportion the consideration in proportion to the value of the respective parts of the property.

You will occasionally see computations based on a valuation of the residential accommodation in isolation as if it were a separate house. That valuation is then deducted from the consideration as a measure of the proportion of the gain which attracts relief. Such an approach is not a proper apportionment and will produce an excessive amount of relief.

64671–64673.

Example: Part of house used for business: Apportionment (CG64674)

J acquired the freehold of a public house in June 1980 for £40,000. He sold it in January 2010 for £720,000 net of costs.

The public house consisted of three rooms used exclusively for business, a kitchen used both privately and for business, and six rooms used as his only residence.

The following Capital Gains Tax computation was submitted:-

	£
Disposal proceeds	720,000
Value at 31 March 1982	(100,000)
Gain	620,000
Private residence relief 7/10	(434,000)
CHARGEABLE GAIN	**186,000**

The private residence relief fraction is based on seven rooms out of ten being used as J's residence.

In these circumstances you will need to obtain the following from the Valuation Office Agency,

- a valuation of the public house at 31 March 1982,
- an apportionment of the value at 31 March 1982 between the three rooms used exclusively for business and the rest of the property
- a similar apportionment of the consideration received.

The Valuation Office Agency reached agreement with J that the value of the public house at 31 March 1982 was £80,000 of which £48,000 should be apportioned to the three business rooms. It is agreed that £432,000 of the sale consideration can be apportioned to the business rooms.

The Capital Gains Tax computation is revised as follows

	Business **£**	**Private** **£**
Disposal proceeds	432,000	288,000
Value at 31 March 1982	(48,000)	(32,000)
Chargeable gain	384,000	256,000 (exempt)

64675–64679.

Letting: Relief for letting of residential accommodation (CG64710)

Where relief is restricted because some or all of the dwelling house has been let as residential accommodation, a further relief may be available under Section 223(4) TCGA 1992.

It is therefore important to identify the entity which makes up the dwelling house for the purpose of Section 222(1)(a) TCGA 1992 in order to decide if further relief is due under Section 223(4) TCGA 1992.

It is also important to properly identify the entity making up the dwelling house where the property is used for a trade which involves letting as this may not be a straightforward question.

Relief is due under Section 223(4) TCGA 1992 where

- a gain to which Section 222 TCGA 1992 applies accrues to an individual, and
- part or all of the dwelling house has at some time in the individual's period of ownership been let as residential accommodation, and
- a chargeable gain arises by reason of the letting.

The amount of the relief is the lowest of,

- the amount of private residence relief given by Section 223(1) to (3) TCGA 1992, or
- £40,000, or
- the amount of the chargeable gain arising by reason of the letting.

64711–64712.

Letting: Meaning of let as residential accommodation (CG 64713)

The meaning of 'let as residential accommodation' was considered by the Court of Appeal in Owen v Elliott (63TC319). From the decision in that case it is clear that it is not necessary for the occupiers of the let accommodation to make that accommodation their home. Residential accommodation may include rooms in a hotel or guest-house, let as part of a trade, where the owner lives on the premises. It is not necessary for the occupier to have a lease for accommodation to be let. The temporary licence granted by a hotel or guest-house proprietor is sufficient.

There is no statutory definition of the word 'let' therefore it must take its everyday normal meaning. The definition provided by the Oxford English Dictionary is,

“To grant the temporary possession and use of in consideration of rent or hire.”

As such in order for relief to be available under Section 223(4) TCGA 1992 there must be some form of 'rent or hire'.

This interpretation is supported by Leggatt LJ in the Court of Appeal judgement in Owen v Elliott in which he said,

“No relevant distinction can be drawn between a letting to an undergraduate nurse or lodger, such as the judge thought would be entitled to relief, and a letting to anyone else. All are lettings of residential accommodation indistinguishable from that which is provided by boarding or guest houses or indeed by hotels, and all are conducted on what the judge called 'a commercial basis'.”

It is clear from this that the judge considered that for the purpose of lettings relief letting must be conducted on a commercial basis.

The definition of 'let' does not however require that 'rent or hire' must necessarily be in the form of money; it may be accepted that 'rent or hire' was paid in money's worth. Therefore if there was a genuine agreement to provide substantial services in return for the provision of the accommodation then this may be sufficient for relief to be available under Section 223(4) TCGA 1992. However care should be taken to distinguish between situations where the agreement represents a genuine commercial arrangement where an appropriate level of money's worth for the accommodation is provided and situations where some other informal arrangement exists and there happens to be an incidental provision of minor services or where the occupant simply meets expenditure one would normally expect the occupant to pay. Relief is not available where the arrangement is not made on a commercial basis.

64714–64715.

Letting: Application to letting trades (CG64723)

The owner of a property occupied wholly or partly as an only or main residence which is also used for a trade involving letting, for example, a guest-house, hotel or nursing home, may live in different parts of it at different times of year. For example, the Owen family in Owen v Elliott (63TC319), occupied a self contained annex to their guest-house in the summer months, but in winter, when there were few guests, they occupied the main building. It was found as a fact that the whole property and not just the annex was the Owens' dwelling house for Section 222 TCGA 1992 purposes. This illustrates the importance of establishing the entity of the dwelling house.

The first step is to determine whether the property which has been sold is a dwelling house. In those few cases where it is not, relief under Section 222 TCGA 1992 is limited to the gain arising on those rooms which have at some time been the owner's only or main residence, *see* CG64320. If, exceptionally, those rooms have been let as residential accommodation, relief under Section 223(4) TCGA 1992 will be available but in respect of those rooms only. Relief under Section 223(4) TCGA 1992 is not available in respect of the remainder of the building, *see* CG64719.

If the individual's residence is in a dwelling house the next step is to identify the entity which makes up the dwelling house of that individual, *see* CG64230+. If that dwelling house is a smaller self-contained unit within a building, relief under Section 222 TCGA 1992 and Section 223(4) TCGA

1992 is only available against the gain on that unit, *see* CG64305-CG64312. So letting of the rest of the building would not give rise to relief under Section 223(4) TCGA 1992.

If the individual's residence is a dwelling house, part of which has been let as residential accommodation, then relief is available under Section 223(4) TCGA 1992 in respect of the whole dwelling house.

Support for this approach may be obtained from some remarks of Millett, J. in his High Court decision in Owen v Elliott (63TC319) on page 325

'During the summer season the taxpayer and his family occupied the annex and used the main building for the occupation of the hotel guests. During the rest of the year, however, they occupied the whole of the building in common with their guests, who were rarely more than one or two in number. It is that feature of the case which raises the present problem, for had the taxpayer and his family remained in occupation only of the annex that would have been treated as the dwelling house which formed the taxpayers only or main residence for the purposes of the relevant statutory exemption and the rest of the building would not have been treated as a dwelling house at all and would have been outside the exemption.'

These remarks did not form part of his reasons for deciding the case and thus do not have binding authority. Although the Court of Appeal overturned the High Court decision they did not comment adversely on the above remarks. So they are a persuasive indicator of judicial thinking.

64724–64734.

The executors of Lord Howard of Henderskelfe (deceased) v R&C Comrs

The deceased resided until his death at a stately home which was owned by a limited company. The appellants were the directors of that company and the executors of the deceased's will. The company opened up the house and the surrounding grounds, and exhibited the works of art in the house—which included a painting by Sir Joshua Reynolds (the painting)—to the general public on payment of an admission fee. There was no formal lease, hire or loan in relation to the use of the painting by the company, or any provision for the company to pay any hire or rental fee to the deceased, but the company was responsible for the costs of insurance, maintenance and security of the works exhibited. After the deceased's death the painting was sold at auction for £9.4 million. The appellants submitted that the gain accruing on the sale of the painting was exempt from capital gains tax (CGT) under TCGA 1992 s 45 as a gain accruing on the disposal of a tangible moveable property which was “plant” and therefore, by virtue of TCGA s 44(1)(c), a wasting asset. HMRC disallowed the claim and the appellants appealed. The issue arose as to whether the painting was “plant”. The appellants argued that in order for an item to be “plant” it was sufficient that it functioned as plant in a trade, ie in the present case the house-opening trade carried on by the company.

In order for an asset to be “plant” and fall within the exemption provided by TCGA 1992 s 44(1)(c) it was necessary for the asset to be owned by the business or at the very least leased formally to it. The proposition that a privately owned asset not used as a business asset by the owner could qualify as plant purely because it was loaned on an informal basis for no charge to a trader would open up substantial tax avoidance possibilities. That could not have been Parliament's intention. On the facts the painting was loaned to the company on an informal basis and could be removed by the appellants at any time and therefore lacked any degree of permanence with the company. There was no reason to describe it as a wasting asset in the hands of the appellants; the appellant executors did not have a business. Nor was there any reason for the painting to be CGT exempt in the appellants' hands just because it might have a different character in someone else's hands. The appeal would be dismissed.

Appeal dismissed.

Administration

Penalty update (Lecture P683 – 10.28 minutes)

Late filing and late payment penalties – SA, CT and other taxes

These penalties were legislated for in FA 2009 Schs 55 and 56, and some are now in force. In particular the new late filing penalty for SA returns and also for CIS returns came into effect in October 2011. The new penalty will therefore apply to SA returns due for filing on 31 October 2011 or 31 January 2012.

The new regime applies to the following taxes (and returns): (other taxes and duties being subsequently added by F(No 3) Act 2010).

- Income tax and capital gains tax (SA returns)
- Income tax or corporation tax (partnership returns)
- Income tax (annual PAYE returns)
- Income tax (pension scheme returns)
- CIS tax (CIS monthly returns)
- Corporation tax (CTSA return)
- IHT (IHT account)
- SDLT (land transaction return)
- SDLT (returns under paras 3,4 or 8 Sch 17A FA 2003)
- SDRT (notice of charge to tax)
- PRT (a return and statement)

These, apart from the CIS return are annual or occasional obligations (prompted by a specific occurrence or event). Note that the penalty for failure to file a return also carries the “offshore matters” extension introduced in FA 2010 Sch 35. This increases the penalties by either 50% or 100% where the tax is income tax or capital gains tax and the tax relates to income or assets outside the UK and certain other listed territories. The offshore penalty dimension came into force on 6 April 2011.

Annual and occasional returns

The initial penalty for failure to submit the return by the due date is £100. The second stage applies where the return is more than 3 months late, and HMRC has decided, and given notice that daily penalties apply (and a start date for daily penalties, which can be earlier than the date of the notice). The daily penalty is then £10 per day for up to 90 days.

Once the return is 6 months late the penalty becomes a further 5% of the tax shown as due by the return or £300 if greater.

When the return is 12 months late, a further 5% or £300 will apply, unless the taxpayer is held to be deliberately withholding information that would enable HMRC to assess the tax due. In these cases the penalty would be:

- Deliberate and concealed withholding – 100% of the tax which would be shown as due by the return, or
- Deliberate but not concealed – 70% of the tax, and

In both cases £300 if greater.

In the case of partnership returns, the penalties are payable by each partner, in addition to any penalties for late filing of his personal return.

CIS returns

The initial penalty is £100. This is followed by a penalty of £200 when the return is two months late.

When the return is six months late a tax geared penalty of 5% becomes due, subject to a minimum of £300. When the return is 12 months late a further tax geared penalty will apply, again based on the behaviour, and whether information is deliberately withheld. In these cases:

- Deliberate and concealed withholding – 100% of the tax which would be shown as due by the return, or £3,000 if greater
- Deliberate but not concealed – 70% of the tax, or £1,500 if greater, or
- No deliberate withholding – 5% of the tax or £300 if greater.

Where the returns are over 12 months late and concern only gross paid recipients the penalties for withholding information are £3,000 or £1,500 in the cases set out first and second above.

Welcome relief for those who fail to register for CIS is brought by para 13. When the first return is filed under the scheme, the total penalty for all defaults is a maximum of £3,000 and the tax geared penalties cannot apply.

Tax geared 12 month penalties and disclosure

The provisions about disclosure when information has been withheld are identical to the provisions in other modern penalty legislation. The terminology is the same, and the structure identical. So the following table summarises the minimum penalties following a disclosure:

	Original penalty	**Minimum penalty following disclosure**	
		Unprompted	**Prompted**
Deliberate and concealed	100%	30%	50%
Deliberate not concealed	70%	20%	35%

There is also a provision for a special reduction under special circumstances, but which do not include ability to pay or the loss of revenue by one taxpayer is compensated by an overpayment by another.

There is no penalty where the taxpayer satisfies HMRC or the tribunal on appeal that he has reasonable excuse for the failure. The normal provisions apply, that is that insufficiency of funds or relying on another to do something is not a reasonable excuse and following the end of the reasonable excuse circumstances the failure is remedied without unreasonable delay.

Late payment penalty

The provisions cover the following taxes, from the following due dates for payment:

- Income tax (and capital gains tax) balancing payments – 30 days late
- PAYE – normal due date
- Tax due by pension schemes - 30 days late
- CIS tax – normal due date
- Corporation tax – filing date for the return
- IHT – due filing date for the return
- IHT due by instalments (ss 227 & 229 IHTA) – first instalment – due filing date, subsequent instalments – 30 days late
- SDLT – 30 days late
- SDRT – 30 days late
- PRT – 30 days late

There are also dates by reference to determinations in the absence of a return and in respect of other assessments.

Annual amounts and PAYE / CIS in excess of 6 months

The penalties for all amounts except corporation tax (but including amounts recoverable under MSC legislation) are:

- Initial penalty 5% of the tax
- Second penalty 5 months after first penalty date 5%
- Third penalty, 11 months after first penalty date 5%

For corporation tax they are:

- Initial penalty 5%
- Second penalty 3 months after penalty date 5%
- Third penalty 9 months after penalty date 5%.

PAYE and CIS of less than 6 months

The penalty is determined by the number of defaults in a tax year, that is late payments. The first default is ignored; **after** that:

- When there are 1, 2 or 3 defaults in a tax year the penalty is of 1% of the total of those defaults
- When there are 4, 5 or 6 defaults the penalty is 2% of the total of the defaults,
- When there are 7, 8 or 9 defaults the penalty is 3% of the total amount of the defaults, and
- For 10 or more defaults the penalty is 4% of the total defaults.

Any amounts that are unpaid more than 6 months after the penalty date are liable to 5%, and a further penalty of 5% applies after 12 months.

Regulations were issued in late July 2009 to the same effect for the new regime in relation to PAYE and CIS tax as no penalties for late payment existed under the old regime.

The late payment penalty for PAYE and related amounts commenced in April 2010, and in May and June 2011 the first penalty notices were issued. HMRC is not presently able to apply penalties automatically, and have said that the penalties will be used on a risk assessed basis initially. One substantial employer who made late payments almost every month in 2010/11, but only by the odd day has been issued with a penalty of in excess of £85,000. The advisers compute the interest cost at around £4,000. An appeal has been lodged.

Penalties for late filing and late payment - VAT

The modernisation of the late filing and late payment penalty system continues, and Finance (No 3) Act 2010, sections 26 and 27 together with Schedules 10 and 11 include details of the new VAT penalties which will replace VAT default surcharge at some point – the changes are dependent on amendments to HMRC's computer systems and therefore will be implemented over the next few years. The new penalties dealt with here will also apply to insurance premium tax, aggregates levy, climate change levy, landfill tax and all excise duties. The changes are implemented in FA 2009 Schs 55 and 56, by adding in the various new taxes and penalty structures.

Late filing penalty

The penalties will be very similar to the existing VAT default surcharge regime, but with separate penalties for late return and late payment. The penalties for late returns for periods between 2 and 6 months will be as follows:

- First late return – £100 penalty. Penalty period starts; initial penalty period is one year
- Second late return (first late in penalty period) penalty £200;
- Third late return (second in penalty period) – penalty £300;
- Fourth late return – penalty £300
- Fifth and all subsequent late returns – penalty £400

Each late return extends the penalty period to the anniversary of the most recent default.

Returns that are more than 6 months late attract a penalty of 5% of the amount due, with a further similar penalty at the 12 month point, and

Those deliberately withholding returns to prevent HMRC from correctly assessing the tax due will be liable to a penalty of up to 100% of the tax due.

Penalties for monthly returns are similar, except that the increases apply to every third late return in the penalty period

Late payment penalty

The late payment penalties are based on the VAT (or other tax) due on the return, as follows:

- First late payment – no penalty but penalty period starts; initial penalty period is one year
- Second late payment (first late in penalty period) penalty 2% of the tax due;
- Third late payment (second late in penalty period) – penalty 2%;
- Fourth late payment– penalty 3%
- Fifth and all subsequent late payments – penalty 4%

Each late payment extends the penalty period to the anniversary of the most recent default.

Contributed by Rebecca Benneyworth

P35 late filing penalty unreasonable (1) (Lecture P685 – 8.08 minutes)

A company (H) had only one employee, who ceased employment during 2009/10. H did not submit its P35 for 2009/10 by the due date of 19 May. On 27 September HMRC imposed a penalty of £400 (at £100 per month for four months).

H appealed, contending that the amount of the penalty was unreasonable because HMRC should have warned it earlier that it was still required to submit a P35 even though its only employee had left.

In this appeal H did not assert that it filed on time. Instead, they said that they thought they did not need to file the appropriate returns because the only employee had ceased employment part way through the year. It acknowledged that it was wrong in that belief and also that HMRC was entitled to levy a penalty. Their complaint was that had HMRC timeously notified it of its default, it would have been remedied it a far earlier time, thus avoiding ongoing penalties.

The First-tier Tribunal accepted this contention and allowed the appeal in part. Judge Geraint Jones observed that 'HMRC deliberately waits until four months have gone by and does not issue the first interim penalty notice until, as in this case, September of the year of default. By that time a penalty of £400, being four times £100 per month, is said to be due. In fact, if the penalty notice operates as a reminder and the taxpayer undertakes the necessary filing forthwith, a further one month penalty arises because the de facto reminder is received only after it is too late to avoid a further £100 penalty. Thus, the effect of HMRC desisting from sending out a penalty liability notice very soon after 19 May of the relevant year, and choosing deliberately to delay that penalty notice until four months has gone by, is to result in the taxpayer facing a minimum penalty of £500.'

It would be simple 'for HMRC to set its computer settings so that a default or penalty notice was sent out immediately after the 19 May in any year, instead of some four months later.' He therefore reduced the penalty to £100.

TC01286: Hok Ltd

P35 late filing penalty unreasonable (2)

HMD Response International was a small charity with some employees. A Chartered Accountant, Mr Williams, performed a number of tasks including filing the year end P35.

HMRC contended that HMD failed to file its P35 for the fiscal year ended 5 April 2010 by 19 May 2010. HMD said that the first that it knew of that situation was when it received a penalty notice in the sum of £400 on 27 September 2010.

However, as that penalty notice was not sent in sufficient time for a P35 to be filed prior to 19 September 2010, HMRC levied a further £100 penalty on the basis that it levies a penalty at the rate of £100 for each month or part of a month during which the filing remains outstanding. Thus, the total penalty demanded was £500, the P35 having been successfully filed online on 12 October 2010.

HMD argued that the P35 was sent to and filed with HMRC on 16 May 2010 but HMRC denied that it was received. They argued that Mr Williams, honestly and genuinely believed that the P35 had been filed by the due date which is a reasonable excuse for the default thereafter.

The Facts

Mr Williams confirmed orally that on the 16 May 2010 he filed the appellant's P35 electronically, or so he genuinely and honestly believed. He produced a copy of his office diary bearing the date 31 March 2010 where he had written the names of various clients and their pass-codes, which were needed to make an online filing. Alongside the appellant's reference he has noted "16/5".

It was beyond doubt that Mr Williams was on line on Sunday 16 May 2010 as HMRC's own system had informed him of that fact.

When Mr Williams gave evidence, he said that he could not be sure whether the submission he made on 16 May 2010 had or had not been successful. In their judgement, he was a candid and honest witness. He genuinely and honestly believed that the filing had successfully taken place.

Miss Weare for HMRC agreed that if a person genuinely and honestly believed that a successful online filing has been completed, that might amount to a reasonable excuse, at least until such time as that person is informed that that belief is incorrect.

Onus of proof

HMRC bears the onus of proving that the annual return was not filed.

A responsible officer should have provided a statement explaining precisely how its online filing system works, stating that they had examined the relevant appellant's account to check whether any relevant on line filing took place; and then give the result of that check.

But this did not happen. HMRC relied upon computer-generated documents without there being any evidence relating to their provenance, content, relevance or meaning was not enough.

Late issuing of interim notice

There could be no logical reason whatsoever for HMRC to delay sending out a penalty notice for four months so that, in effect, a minimum penalty of £500 will be levied unless the taxpayer had unilaterally realised that it has failed to undertake the necessary filing. Its computers could be set to issue a penalty notice at any time after 19 May in each year; but it chooses to wait until mid/late September in each year.

It has long been part of the common law of this country that manifestations of the State must act fairly and in good conscience with its citizens. HMRC neither acted fairly nor in good conscience.

They did not consider that any penalty would be recoverable over and above the £100 penalty for the first month, unless HMRC proved (the onus being upon it) that even if such a penalty notice, which would have acted as a reminder, had been issued, the default would nonetheless have continued. It had proved no such thing.

The appeal was allowed in full. The £500 penalty is set aside.

TC01322: HMD Response International

No reasonable excuse for late return

The taxpayer company received a penalty from HMRC for the late submission of its end-of-year return for the year 2009/10. The business appealed, claiming reasonable excuse.

The company’s agent said the problem lay with the Revenue’s delay in registering the taxpayer for PAYE, despite ‘numerous requests’.

But he completed the form CT41G incorrectly in 2009, ticking ‘no’ to the question that asked whether PAYE was already being operated.

He had misunderstood, thinking wrongly that the question was asking about registration for PAYE. He did not, however, chase up HMRC for the necessary documentation to operate PAYE over the next year.

The First-tier Tribunal decided the agent should have taken steps to obtain the relevant materials. There was no reasonable excuse for the late return, so the penalty stood.

The taxpayer company’s appeal was dismissed.

Manchester Electricals Ltd (TC1418)

Problems registering for PAYE online

The taxpayer company’s sole director registered for PAYE online on 7 May 2010. He applied for an activation code in good time, but it had expired when it arrived.

The director spoke to the Revenue's helpline but found the online process difficult. He therefore appointed an agent to deal with the matter.

After some difficulty, the agent registered the company for online filing on 24 May and activated the system on 3 June. He believed he successfully filed the return on 24 June. However, HMRC did not register it.

The taxman issued a late-filing penalty in September 2010, against which the company appealed.

Eventually, the Revenue informed the agent that the reason for the return not having been officially received was because the company’s address had been entered incorrectly. The company subsequently filed the return successfully on 24 March 2011.

The First-tier Tribunal judge, Anne Redston, said HMRC were wrong to say ‘problems with online systems including a lack of understanding and problems accessing the online systems’ cannot be a reasonable excuse.

She said the company director had acted in a way that indicated he intended to honour his tax obligations, by trying to register for online filing but then deciding to appoint an agent.

With regard to the agent, the judge noted he thought he had to register for agent authorisation, not realising the requirement was suspended for PAYE online filing.

When he filed the return in June, unsuccessfully, HMRC said he should have known the attempt had not worked because he did not receive two acceptance messages.

The judge said there was no evidence the online filing process made it clear that non-receipt of the messages meant the return had failed. A person could not correct a mistake that he did not know he had made.

The company therefore had reasonable excuse and the penalty was dismissed.

The Management and Design Co Ltd (TC1417)

SA taxpayers can see PAYE notices online

HMRC have launched a facility to allow self-assessment (SA) taxpayers to view their PAYE coding notices digitally. To be able to use the new offering, it is necessary to first register for the Revenue's web services and enrol in the department's SA online service.

Initially, it will be possible to view only notices issued on or after 11 October 2011 or the date on which the taxpayer registered for SA online, if later. In due course, taxpayers will be able to see coding notices issued on or after 11 October 2011 for the current, previous and next tax year.

Surcharge for late payment of income tax

In April 2007 an individual (R) asked his accountants to inform HMRC that he was receiving income from self-employment as a website manager. The accountants did not do so until April 2008, and then received no reply from HMRC.

In April 2010 the accountants submitted an online form CWF1, and also submitted returns for 2006/07 to 2009/10. HMRC imposed surcharges for 2007/08 and 2008/09.

R appealed, contending that he had relied on his accountants.

The First-Tier Tribunal accepted R's evidence and allowed his appeal. Judge Aleksander found that R had provided details of his income to his accountants in time for them 'to prepare tax computations and returns by the statutory time limits', and that there was 'no reason for (R) to think that his accountants would fail to notify HMRC of his chargeability to income tax within the statutory time limit'. Applying the principles laid down in *Rowland v HMRC* (2006 SSCD 536), the circumstances constituted a reasonable excuse.

S. Rich, August 2011

‘Time to pay’ and subsequent surcharges

The taxpayer filed his 2007/08 tax return on time but failed to pay the tax by the due date of 31 January 2009. He entered into a 'time to pay' arrangement with HMRC, whereby he would make monthly instalments.

He made only three payments; in February 2010, the Revenue imposed surcharges on the outstanding debt.

The taxpayer appealed against the surcharge, claiming insufficiency of funds. He explained that a consultancy agreement had been unexpectedly terminated and he did not receive payments for work he had carried out as a contractor. In addition, expenses he had incurred had not been reimbursed.

The First-tier Tribunal decided the taxpayer could not have foreseen events and not known he would receive considerably less remuneration than anticipated.

He had a family of five to maintain, had remortgaged his home twice, and yet ‘continued to struggle on’. He therefore had a reasonable excuse for the late payment of tax. The surcharges were set aside.

The taxpayer’s appeal was allowed.

G Knapper (TC1220)

MEM Industrial Roofing Ltd

The taxpayer company said he posted his December 2010 construction industry scheme (CIS) return by first class post on 12 December 2010.

HMRC claimed the return was received after 19 December, the deadline date, and imposed a late-filing penalty. They said it was not the first time the company had been late with its CIS return, and previous appeals against penalties had been upheld.

The taxpayer appealed.

The First-tier Tribunal judge noted that the company had not obtained proof of posting, but she added, 'HMRC cannot simply impose a requirement that taxpayers obtain proof of posting; this is outwith their statutory powers'.

The judge added that it could be an onerous matter to obtain evidence, especially for a small business – and 'even allowing for a certain dilatoriness over the Christmas period', a letter posted on 12 December could be expected to arrive on or before 18 December.

Thus, she said, HMRC were deemed to have received the return unless they could prove otherwise. The department had provided no evidence with regard to the procedures for opening and logging post. A computer printout, which they had produced to show the date at which the form was scanned by the Revenue, was not conclusive evidence of when the document actually arrived.

The judge decided the taxpayer had posted the return on 12 December and that it was received by HMRC before the deadline.

The company's appeal was allowed

How to resist extrapolation in an enquiry **(Lecture B682 – 8.10 minutes)**

An HMRC attempt to extend an enquiry to earlier years is something you must be on guard about throughout an enquiry. They may well not raise it as an issue until the last moment, as part of their negotiating techniques, and ordinarily you should not raise it yourself except perhaps as a negotiating point. Instead be ready at any time to dispute any attempt that may be made to take agreed adjustments and extrapolate them to earlier years.

HMRC are limited to going back 4 years in an enquiry by way of a discovery, unless they can show that the taxpayer has not taken reasonable care in which case they can go back 6 years. The right to go back 20 years only applies if there has been deliberate evasion of tax.

Resistance

You may be able to resist any extrapolation attempt as under, depending on the issues involved:

- the circumstances were peculiar to the year under enquiry
- the allowable expenses item agreed to be reduced did not arise in earlier years
- the undeclared income did not arise in earlier years, when all income was properly identified
- the business was run differently in earlier years
- the agreed adjustment related to a specific item such as a balancing adjustment on drawings, which did not arise in earlier years

Paragraph EM2010 of the Enquiry Manual

This explains the approach to quantification of profits when reopening earlier years. It certainly suggests that HMRC reckon they have the upper hand, as shown from the extracts below:

"Before quantifying profits for earlier years, you must establish the true profits of the period under enquiry as accurately as possible. You will often not look at any other period in such depth, and importantly whatever is agreed will set the pattern for future accounts.

In making the case for reviewing earlier years, you will be relying on inferences drawn from the examination of the returns under review and any third party information you have suggesting that returns are incomplete.

At this point all the evidence should be brought out whether it has been revealed so far or not. If you have already established sizeable understatements for the enquiry year resulting from faulty record keeping of a continuing nature, you are unlikely to have difficulty in demonstrating a case for looking at the earlier years.

Where you hold evidence in a business case that earlier returns are incorrect it will usually be advisable at this stage to give the taxpayer pointers as to what may be wrong.

Where it is intended to scale back the additional profits for the enquiry year, you are unlikely to need much extra documentation.

In smaller cases where it is admitted that the records on which accounts are based are defective, there is no objection to profits being agreed on broad lines, but unrealistic figures should not be accepted simply for the sake of reaching agreement".

Dr I Syed v HMRC TC01176

HMRC opened an enquiry into Dr Syed's tax return for a particular year and concluded that a number of items of expenditure claimed were not properly deductible. The accountants acting did not dispute that the proposed amendments to the return for the year of enquiry were valid. However, the inspector also raised similar discovery assessments in respect of both prior and subsequent years on the basis of the *presumption of continuity*.

The tribunal held that the phrase, taken from the case of *Jonas v Bamford*, was not an expression of legal principle. Rather it was a common sense view of what the evidence will show. While it might generally be reasonable and sensible to conclude that if there was a pattern of behaviour in one year that pattern will have been followed in the previous year, it would not always be the case.

The phrase *presumption of continuity* came from the High Court which said: *"Once the Inspector comes to the conclusion that on the facts which he had discovered, Mr Jonas has additional income beyond that which he has so far declared to the Inspector, then the usual presumption of continuity will apply. The situation will be presumed to go on until there is some change in the situation, the onus of proof of which is clearly on the taxpayer".*

The tribunal considered this passage and concluded that it expressed no legal principle saying that as a matter of law it would be quite wrong to assume that because something happened in one year it must also have happened in the prior year. They considered that the Court was merely expressing a common sense view. The tribunal said:

"it will generally be reasonable and sensible to conclude that if there was a pattern of behaviour this year then the same behaviour will have been followed last year. Sometimes however that will not be a proper inference: there will be occasions when the behaviour related to a one-off situation perhaps a particular disposal, or particular expenses; in those circumstances continuity is unlikely to be present. In the circumstance of Jonas v Bamford there had been undeclared income in a particular year and it was not unreasonable to conclude that the same habit of concealing income had been followed in previous years".

HMRC argued in this case that because they were able to agree a disallowance of expenditure in one year, they were entitled to assess tax for the earlier years without any further justification. The tribunal agreed, on the grounds that there was no evidence that HMRC were wrong and it is up to the taxpayer to produce evidence of what any earlier year adjustment should be so as to enable a different figure to be computed.

Of course, when HMRC raises an assessment the onus of proof is on the taxpayer to show that on the balance of probabilities it is excessive. However, arguably this case goes much further and extends the onus of proof such that any agreement to a profits adjustment will be vulnerable to a claim to extrapolate.

Contributed by Gerry Hart

Business records checks update **(Lecture B681 – 7.22 minutes)**

Introduction

In December 2010 HMRC announced a consultation on their planned programme of checks of business records (BRCs) within the small and medium enterprise (SME) sector.

They attempted to justify the introduction of this programme by claiming that research by the OECD suggests (to HMRC that is) that poor business record keeping is responsible for a loss of tax in up to 2 million SME cases annually.

The consultation exercise was limited to consideration of the best way to implement the programme – not whether it was a good idea in the first place.

Since the announcement several changes have arisen under this initiative.

Scope

1. No new legislation is proposed - the programme uses existing law regarding both record keeping requirements and penalties for failure to comply with those requirements, with penalties being imposed for significant record keeping failures.
2. Following the period of consultation HMRC said they would publish a summary of the responses to the consultation explaining how those responses were taken into account in taking forward a programme of BRCs. It was envisaged that this would be published around the end of March 2011 but that was quietly replaced by HMRC "trial testing" the programme without notifying anybody about this change of plan.

The trial

HMRC finally admitted that they were testing BRC in a limited way between 4 April and 15 July 2011, but said that no BRC activity took place during the consultation period.

Main aspects of the "test and learn" activity, according to HMRC, are:

- involves 30 HMRC staff in Edinburgh, Irvine, Manchester, Liverpool, Stockport, Sunderland, Sheffield and Portsmouth
- estimated 1,200 BRC visits undertaken in this period, depending on the outcomes of the early stages of the trial
- cases selected using HMRC's existing risk engines and procedures
- no intention of charging any penalties during the trial period

Objective of Business Records Checks

The stated objectives are to:

- Use the powers of Schedule 36 FA2008 to check business records in up to 50,000 cases annually, beginning in the second half of 2011 when the aim was for 20,000 checks up to 31 March 2012.
- Impose penalties for significant record keeping failure, thereby: bringing about an improvement in record keeping across the population of the (claimed) roughly 2 million SMEs whose records currently fall below standard.
- Thereby reduce the tax losses to the Exchequer that result from poor business records.

All change!

Whilst no doubt HMRC will claim that the objectives remain, they have now admitted that the BRC programme has been scaled down as under:

- The original target of 50,000 businesses to be selected for checking in 2012/13 has reduced to 20,000.
- The pro rata number to March 2012 of 20,000 visits has reduced to 12,000.

At the same time HMRC claim that the 50,000 figure was never a target total, and in fact they will extend the scheme by increasing staff working on the check from 30 to 120 by the end of 2011. They claim they are building up the numbers in a measured way before introducing BRCs on a larger scale. Nevertheless, using 120 staff to check records of 20,000 businesses per annum means an average work load of around 3 per week which suggests a less superficial approach than was first feared. It should also reduce the risk of the HMRC officer not really understanding the records or indeed how the business works, and as a result coming to the wrong conclusions.

Selection of cases, and the operation of Business Records Checks

1. HMRC plan to select cases for a BRC on the basis of risk assessment, focusing on businesses that have features associated with poor record keeping.
2. A small proportion might be selected at random to verify the worth of BRCs and to help improve the risk assessment criteria.
3. The corrective impact of BRCs could be increased, and poor record keepers further encouraged to bring their records up to standard, through leverage. HMRC give an example of when they identify a business population as having the features associated with poor record keeping, they could write individually to that population explaining:
    - that they are in a category at risk of having poor business records
    - that HMRC will be conducting checks of the business records of many of those in that population
    - and that they are, therefore, more likely to be chosen for such a check in the coming year

Location, Duration and Extent of a Business Records Check

The law in Schedule 36 FA2008 allows an officer of HMRC to enter a person's business premises and inspect statutory business records, where that is reasonably required for the purposes of checking that person's tax position.

BRCs are pre-arranged with at least 7 days notice. Traders and their agents will be made aware in advance and appointments made. Typically, a BRC will consider a 'sample' of the records kept (not the records in totality), to check that a full and clear record is being kept of all business 'money in' and 'money out', and that the records allow an accurate interpretation to be made as to the nature of those receipts and expenditures. There is no attempt to insist on a specified format for business records – rather, a BRC is intended to check whether the records of all business income and outgoings are recorded in a way appropriate for the size and nature of the trade.

Contributed by Gerry Hart

Business Taxes

Tutors and coaches targeted in new tax disclosure campaign

HMRC's latest campaign to encourage disclosure of undeclared tax liabilities is aimed at private tutors and coaches, who will have until 6 January 2012 to register for the “Tax Catch-up Plan”.

The Tax Catch up Plan (TCP) is for people providing private lessons, regardless of whether they have a teaching qualification. It is aimed at those who profit from tuition and coaching, as a main or secondary income, on which the correct tax has not been paid because they have not told HMRC about it.

The opportunity is available to those providing tuition, instruction or coaching. This includes, for example, tuition of traditional academic subjects, fitness and dance instruction, musical instrument tuition, art, services provided by life coaches and others.

Under the plan, tutors and coaches have until 31 March 2012 to come forward and tell HMRC about their outstanding tax for the years up to 5 April 2010, and pay what they owe. The plan makes it easy for customers to put their tax affairs right and keep them on the right track in the future.

Those who come forward by the deadline are likely to receive the best possible terms for paying the tax owed. If they have to pay a penalty, it is unlikely to be more than 20% of the unpaid tax. Those who wait for HMRC to come to them will find that they have to pay much higher penalties, or even face criminal prosecution. After 31 March, using information pulled together from different sources, HMRC will investigate those who have chosen not to come forward.

Marian Wilson, Head of HMRC Campaigns, said—

“Our campaigns are designed to ensure tax is paid so that the money is available to spend on public services used by everyone. We are making it as easy as possible for people offering tuition and coaching to use this unique opportunity to put their tax affairs in order by making a full disclosure, and benefit from the best possible terms.

“We are using various intelligence sources to identify and then target those who do not take advantage of this opportunity to declare their full income. The message is clear: contact us before we contact you.”

The Tax Catch up Plan has two stages—

1. From 10 October 2011 to 6 January 2012, tutors/coaches/instructors must register with HMRC to “notify” that they plan to make a voluntary tax disclosure.
2. By 31 March 2012 those who have registered to notify must tell HMRC what they owe and pay the tax, interest and penalties due.

People can register online by:

- completing a notification form - www.hmrc.gov.uk/ris/tcup/index.htm
- calling HMRC on 0845 601 8817

A dedicated team is ready to help, Monday to Friday, 08:00 until 19:30.

Author’s claim for expenses

A freelance journalist and author (H) decided to write a book entitled 'A Year on a Pontoon'. He claimed a deduction for expenses of £10,000 incurred in moving a boat which he owned to southern France and living there for a year. HMRC rejected the claim on the basis that the expenditure had not been wholly and exclusively incurred for the purpose of his profession as an author, but was partly incurred for personal reasons.

H appealed.

The First-tier Tribunal dismissed his appeal, finding that 'the expenses incurred had a duality of purpose', but the Upper Tribunal remitted the case for rehearing. Judge Bishopp held that it appeared that the First-tier Tribunal had erred in law by failing to consider ITTOIA 2005 s 34(2).

ITTOIA 2005 s 34(2) provides that where an expense is incurred for a dual purpose, a deduction may be permitted for 'any identifiable part or identifiable proportion of the expense which is incurred wholly and exclusively for the purposes of the trade'.

Huhtala v HMRC

Wholly and exclusively incurred?

A self-employed musician had had a reasonable income during the 1990s, but his income declined after 2001 and he subsequently began working as a music teacher. In his 2006/07 tax return he claimed a loss of £6,181. HMRC began an enquiry and discovered that 94% of his trading income derived from his work as a music teacher. They issued an amendment disallowing much of the expenses which M had claimed, on the basis that he was no longer trading as a musician and should be treated as a teacher. M appealed, contending that he was continuing to trade as a musician despite the decline in his income. The First-Tier Tribunal accepted this contention and allowed his appeal in part. Judge Brooks held that ‘despite the significant fall in his income, he had not ceased to be a musician and become a teacher’. On the evidence, he held that the majority (but not all) of the expenditure which M had claimed was allowable (reducing the loss from £6,181 to £2,489).

TJ Moore, August 2011

Date of cessation of trade or profession

A doctor (B), who had carried on an employment agency for locum doctors, was suspended by the General Medical Council in 1998, and was erased from the register of medical practitioners in 2006. He submitted a tax return for 2008/09 declaring that he had no income and claiming a loss of £8,785. HMRC rejected the claim on the basis that B was no longer carrying on a trade or profession as a doctor.

B appealed, contending that he had been actively continuing to challenge the GMC decision. The First-tier Tribunal dismissed B's appeal. Judge Staker held that B had not been carrying on a trade during 2008/09. However, B's appeal against discovery assessments for 2006/07 and 2007/08 was allowed, on the grounds that B had made a full disclosure in his returns for those years, so that HMRC had not made any discovery.

T Bhadra (t/a Admirals Locums) v HMRC

HMRC’s view: Goodwill in a business run from ‘trade related property’

HMRC used to take the view that because the business in a trade related property could not be separated from the property itself, there was little or no value to goodwill.

Following the *Balloon Promotions Ltd v Wilson* case, HMRC now accepts that if a business is sold as a going concern this will include some element of goodwill but that its valuation depends on the circumstances in each case.

Businesses using a trade related property such as public houses, hotels, care homes and cinemas create a problem for valuation purposes because of the potential to generate trading income which is intrinsic to the property. Typically they are unique as regards location, size, character and level of adaptation to their individual use.

Why does valuation matter?

There are two main reasons:

- SDLT - we need to determine the value of the interest in property on a ‘just and reasonable’ basis
- Claiming relief for goodwill under s715(3) CTA 2009

Market value of property assets

HMRC believe that trade related properties should be valued using an existing use valuation in accordance with guidance contained within RICS Red Book Guidance Note 2.

They claim that this provides clear guidance on the valuation of trade related properties and using a profits rather than cost approach. The trading potential of the property should be properly reflected within the property's value and that the current operator's goodwill (personal goodwill) is not to be reflected.

To help establish the trading potential of the property, a review of trading accounts is needed where the valuer is looking to distinguish income likely to be expected and sustained from similar use of the property by any number of potential purchases, from the actual performance of the existing operator.

The valuer is not incorporating the actual results or business of the current operator (personal goodwill) but rather the value of the property should the business continue in its existing use reflecting the fair maintainable level of trading income that could be sustained. In valuing such a property, we need to consider the market, demand and most obvious function of that property at that point in time.

HMRC seeks to establish the likely bid that would be made based on the facts at the time. So where a property had been closed and boarded up for 12 months, the most likely value may not be based on previous trading but rather on alternative conversion to say as residential accommodation.

The HMRC approach seeks to exclude any value from operator goodwill and that the benefit of any contracts with customers, staff and suppliers that will not run with the property would either have to be acquired separately from the vendor or the purchaser would need to make their own arrangements.

Trading potential that is inherent and runs with the property must be reflected in the valuation and is an area where the valuer needs to make a judgment call.

HMRC are in no doubt that trading potential and established use enhance the property assets. This cannot be separated out and called operator goodwill.

Alternatives rejected by HMRC

HMRC reject a number of common alternatives:

1. For SDLT cases, a common approach is to submit a value for land and buildings in isolation based on 'special assumptions'. HMRC do not accept special assumptions that include, for example, that the trade has ceased and the property closed.
2. Use HMRC's approach but then deduct the 'investment value' of the land and buildings and in-situ value of the chattels/trade inventory from the sale price of the going concern. Such assets when valued separated may well be lower than when valued as one operational entity.
3. Adopt a pro – rata apportionment of the sale price based on the value of the land and buildings and chattels/trade inventory together as an operational entity including business goodwill based on a multiplier of the profits similar to that used for non-trade related businesses. But then the value of goodwill is not supported by any evidence.

Adapted from an article in Tax Adviser August 2011

CIOT's view: Goodwill in a business run from 'trade related property'

When a business with trade related property is disposed of as a going concern, we need to apportion the transaction value between:

- Real estate and other tangible assets and
- Intangible assets and goodwill

Balloon case

The *Balloon* case was a dispute about whether an amount received for each of four restaurants was goodwill. The outcome of the case was that the amount allocated to goodwill as contended by the appellant was correct.

Given that a restaurant is a trade related property (see para 1.4 RICS Guidance Note 2), it therefore seems that this case was all about the value of goodwill with HMRC's value being zero compared with the successful value of the appellants.

So why in HMRC's article in Tax Adviser (August 2011) did HMRC state:

> *'…. The Balloon case did not consider the valuation issues relating to goodwill in connection with trade related properties at all.'*

The case did not consider the detailed calculation methods apportioning sales consideration to goodwill and property but it certainly considered the value of goodwill in a business tied to a trade related property.

Surveying valuation standards

HMRC say that trade related properties should be valued using an existing use valuation in accordance with guidance contained within RICS Red Book Guidance Note 2. Is this the correct approach given that that guidance clearly states that tax apportionment is outside its scope?

Valuing approaches

Broadly, there are two different approaches for apportioning the sale price of a business with a trade related property when it is sold as a going concern:

1. Value the identifiable assets and deduct them from the total consideration to arrive at goodwill (Accounting approach)
2. Separately value all assets including goodwill and rateably apportion the total consideration to each asset accordingly (Used for capital allowances – *Bostock v Totham*)

HMRC adopt method 1 and value using the existing use profits based approach for a 'reasonably efficient operator'.

Failure to cross check

However, HMRC's valuation approach involves significant areas of subjective judgment but does little in terms of cross-checking the values that they arrive at to ensure that they make sense.

As an example, property lease agreements can be specific and their value will depend on precise terms of the lease agreements.

It would seem logical to check any property value arrived at using a profits based approach against the value obtained using a property investor approach and to have explanations for any differences.

Capital return attributable to property interest

When valuing many assets it is common practice to take into account the net present value of expected future income streams.

When calculating a value for goodwill, one should take into account the future business income stream but after accounting for the return due to the property.

HMRC do not consider the property versus trade return in their valuation method.

Combined value > Sum of individual assets

Where this occurs, two options exist for dealing with the excess:

1. Apportion rateably across all assets
2. Allocate to particular assets using some rationale

For trade related property, HMRC believe that the majority of the excess should be apportioned to the real estate as businesses run from trade related properties are rarely sold without any form of property interest. But is this not rather a narrow view?

Summary and conclusions

HMRC's approach to apportioning values for tax is not the only or main method that should be considered for tax because it:

a) is based on RICS guidance which states that tax apportionment is outside its scope

b) seems to provide little cross-checking of the apportionment against a valuation based on the assessment of the separate value of individual assets and apportionment using A/(A+B) used elsewhere for tax

Adapted from an article in Tax Adviser September 2011

Intangible fixed assets and related parties **(Lecture B683 – 13.24 minutes)**

Broadly the intangible fixed asset provisions introduced in FA 2002 and now contained in Part 8 CTA 2009, apply only to chargeable intangible assets acquired by a company from a third party or created by a company after 31 March 2002. The provisions allow for debits and credits arising on intangible assets to be brought into account for tax purposes based usually on the amounts charged in the accounts. The rules are however modified where transactions take place between related parties. In essence, there are four circumstances in which the existence of related parties will have an impact on the normal tax rules and these are as follows:

- Assets in existence prior to 1 April 2002, normally remain outside the rules and remain so where a transferee company acquires from a related party, an asset which was a " pre FA 2002 asset" in the hands of the transferor and thus outside the intangibles regime (see however commentary below regarding the acquisition of existing assets from related parties);

- Where an asset is a chargeable intangible asset in the hands of both transferor and transferee companies and the transfer is between related parties, the transaction normally takes place at market value with exceptions applying for transfer pricing, transfers liable to other taxes, transfers within a group and the gifts of business assets;

- A company is not able to claim roll-over relief in respect of a gain realised on the disposal of an intangible fixed asset to a related party;

- Where the recipient is not within the charge to corporation tax and the paying company does not pay, to a related party, royalties in full within 12 months of the end of the accounting period in which it was accrued in the company's accounts, it will only be able to obtain relief for royalty payments payable on a paid basis.

Related parties

The definition of a related party is defined in chapter 12 of part 8 CTA 2009. This states that a company will be related to another person where:

1. The other person is a company and :
   (a) One of the two companies controls or has a major interest in the other;

(b) Both of the companies are under the control of the same third person (not necessarily a company); or

(c) Both companies are members of the same group; or

2. The company is a close company and the other person is, or is an associate of :

(a) A participator in the company; or

(b) A participator in a company that has control of, or holds a major interest in, the company.

For these purposes, participator and associate follow the meaning within s454 CTA 2010 with the exception of participators who are only loan creditors of the company.

Control (s836 CTA 2009)

In relation to the meaning of control, this follows the narrow definition outlined in s1124 CTA 2010 where control is measured in terms of shareholding, voting possession and the powers conferred by the articles or other documents. Furthermore, in determining whether a person is able to control a company or has a major interest on a company, certain rights and powers are attributed to that person including the entitlement to future rights and powers, the rights and powers of other connected persons (connection for these purposes defined in s843 CTA 2009) or other persons acting on their behalf or under their direction.

Major interest (s837 CTA 2009)

A person has a major interest in a company if

a) The person and one other person together have control of that company, and

b) The rights and powers by means of which they have such control represent, in the case of each of them, at least 40% of the total.

Existing intangible fixed assets acquired from a related party

An asset acquired from a related party will be treated as a chargeable intangible asset under the provisions of s882 CTA 2009, in the following circumstances:

a) The asset acquired from a company was already a chargeable intangible asset (either because it was created by that company or acquired from an unrelated party);

b) The asset was created on or after 1 April 2002 by the related party or any other person;

c) The asset is acquired from a person ("the intermediary") who acquired the asset on or after 1 April 2002 from a third person (say "Mr B") –

(i) Who was not at the time of the acquisition a related party to the intermediary or a company in which the intermediary was a related party and

(ii) Who was not at the time of the acquisition by the company, a related party in relation to the company.

Goodwill

One aspect which often causes concern is the treatment of internally generated goodwill on a sale to a related party for instance on incorporation of an unincorporated trade.

Expenditure on internally generated goodwill falls outside the transitional rules which apply to the extent that a company held an intangible fixed asset immediately before and immediately after 1 April 2002, where the company or a related person was carrying on the trade or business at any time before 1 April 2002. Where however the business was started on or after 1 April 2002 and goodwill is created and subsequently disposed of to a related party the value attributable to goodwill will fall within the intangible asset rules (s882 (1)(c) & (5) CTA 2009) irrespective of whether the recipient is a related party.

Contributed by Martin Mann

End for payouts by dissolved companies

The Treasury Solicitor's office has withdrawn guidelines designed to allow share capital of up to £4,000 to be paid out to shareholders as a result of a company being struck off, and not to be treated as the property of the crown under the *bona vacantia* or ownerless property rules.

Currently, a business may be struck off without the need for a formal liquidation under the Companies Act 2006, provided certain conditions are met and procedures are followed. This can provide a low cost and relatively straightforward means of dissolving a company without appointing a liquidator.

Following the withdrawal of the guidelines, companies can still be struck off without appointing a liquidator, but they must first reduce their share capital to ensure payment of funds to the shareholders, rather than to the crown.

An easier method of reducing a private company's share capital was introduced in the Companies Act 2006. Generally, the repayment of share capital will be treated as a capital receipt in the hands of the shareholders.

The Treasury is also consulting on withdrawing HMRC extra-statutory concession (ESC) C16, which can allow dividends paid in anticipation of striking-off to be treated as capital gains tax proceeds instead of income. This can reduce the effective rate of tax paid, especially where the 10% entrepreneurs' relief rate is available instead of income tax of up to 36.1% of the net distribution.

The legislation, as currently drafted, would tighten the conditions to be met and would limit capital treatment to situations in which total assets to be distributed are £4,000 or less. Companies with greater total assets will have to appoint a liquidator.

Mick Sanders, corporate recovery principal at MacIntyre Hudson, said it was still possible to secure the capital treatment for shareholders, but he suggested that 'companies with significant assets or a commercial risk of claims against the company or its directors may be better advised to consider a formal liquidation, now and in future'.

Trish Sankey, senior manager at Baker Tilly REVAS, expressed dismay at the withdrawal of the guidelines, and said, 'Although, technically, unauthorised capital distributions have always been unlawful under the Companies Acts, shareholders in companies with share capital and capital reserves of less than £4,000 in aggregate could previously informally dissolve the company confident that they would not be pursued by the Treasury Solicitor.

'Removal of this concession means that now the shareholders of even the smallest companies, which are wound up by distributing reserves to below the amount of the issued share capital and capital reserves may be pursued personally to make good those monies which are technically forfeit to the Duchies of Cornwall or Lancaster – in effect to the government.'

Loss carry-forward on company reconstructions

A Swiss company (M) began trading in the UK in 2001. It submitted corporation tax returns claiming loss relief. HMRC issued amendments disallowing the claims on the basis that the requirements of ICTA 1988 s 343 (see now CTA 2010 s 940A) were not satisfied. The key condition here being that there must be 75% common ownership of the trade before and after the transfer of the trade between two corporate entities. Where the 75% test is not met the losses will not be transferred.

M appealed, contending as a preliminary point that the UK legislation contravened the EC Treaty. The First-tier Tribunal rejected this contention and dismissed the appeal. Judge Shipwright observed that 'it is hard to see, when transfers of trades and transfers of shares are each treated in the same way whether UK-incorporated or non-UK incorporated companies are involved, that there is a restriction which is discriminatory'.

Mindpearl AG v HMRC

Value Added Tax

Salary sacrifice arrangements (Lecture B684 – 13.48 minutes)

HMRC have at last responded to the CJEU judgment in *AstraZeneca* (C-40/09), in which it was held that vouchers provided to employees in exchange for a reduction in salary were supplied for consideration. The previous policy is described as follows:

For VAT purposes 'salary sacrifice' has a very narrow and specific meaning. It describes an arrangement such as in the Co-operative Insurance Society case [1992] (VTD 109) where an employee opts to receive services and forgoes part of their salary in return. The employee enters into a new employment contract or has their existing contract amended to reflect the new arrangement which they are tied into.

In relation to such schemes HMRC have, to date, accepted that the reduction in the salary did not constitute consideration for the benefits received and output tax was not due. Employers were able to recover the related VAT as input tax, subject to the normal rules.

In cases where the employee has been provided with the use of a good (for example a home computer) and opts to purchase it at the end of the scheme it has always been HMRC's view that VAT is due (where applicable) at that stage.

The new policy will apply the principles of the *AstraZeneca* case to any situation in which an employee is supplied with goods or services in exchange for a reduction in salary. It is recognised that this may cause problems with existing arrangements, so the new policy will not be implemented until 1 January 2012.

The value of the consideration will normally be the amount of salary forgone. The Brief states "*Where this is less than the true value (for example where employers supply the benefits at below what it cost to buy them in), the value should be based on the cost to the employer,*" but does not give any technical justification for using this. As this is a barter arrangement, consideration is primarily set at the subjective value to the person who is receiving it (which would justify the use of "cost" by the employer, as that is what the employer is prepared to spend in order to provide the goods or services); however, that is usually overridden by an explicit or implied agreement of value between the parties, and the salary sacrifice arrangement appears to meet that condition.

HMRC do not believe that the direct tax consequences of any salary sacrifice arrangements are affected. The case was about VAT and has no wider application. HMRC also point out that the provision of goods or services for a deduction from salary, shown on the payroll, has always been regarded as a supply for consideration and is therefore not affected by this change in policy.

Particular comments are made in relation to the application of the new policy to:

- cycle to work schemes (which have become common in order to exploit a direct tax exemption for bicycles loaned to employees for commuting);
- face value vouchers, where the policy has not changed because it was upheld in *AstraZeneca*;
- childcare vouchers, which are exempt from VAT and therefore may lead to an input tax restriction for the employer;
- food and catering, which is not VATable if there is no consideration, but if provided under a salary sacrifice arrangement will become chargeable from 1 January 2012;
- cars, which are not covered by the new policy because the employer will generally not be able to recover input tax on the purchase. The onward supply of the car is technically therefore exempt, although the Brief appears to regard it as outside the scope. Regulations which pre-date the *Italian Republic* case excluded employee cars from any output tax charge even where there is an explicit deduction from salary, mainly to make sure that there was never any justification for recovering input tax.

R & C Brief 28/2011

A further Brief was issued in October 2011. This subsequent Brief provides further guidance to assist businesses with the implementation of changes to VAT accounting in relation to salary sacrifice arrangements announced in Revenue and Customs Brief 28/2011 on 28 July 2011.

1 This brief provides further guidance to assist businesses with the implementation of changes to VAT accounting in relation to salary sacrifice arrangements announced in Revenue and Customs Brief 28/11 (LNB News 28/07/2011 79) on 28 July 2011.

2 Salary sacrifice agreements in place before 28 July 2011 which extend beyond 31 December 2011

For salary sacrifice agreements that were signed or otherwise agreed by the parties on or before 27 July 2011 and which extend beyond 31 December 2011, HM Revenue & Customs (HMRC) will allow amounts of salary foregone in return for taxable benefits to continue to be free of VAT until—

- The date that a fixed term agreement expires or the fixed number of salary sacrifice payments specified within the agreement are completed (if the agreement expires before 1 January 2012 any agreement subsequently entered into should follow the VAT treatment described in s 3 below).
- The date of an employee's annual salary/benefits review. HMRC will regard any salary sacrifice arrangements put in place after that date as a new agreement for VAT purposes which should follow the treatment described in s 3 below. This will be the case even if the employee continues to receive the same taxable benefits as before the review.
- The date of any other review or renegotiation that leads to a change in the provision of benefits under a salary sacrifice agreement or to a change in an employment contract.

Following one of the above events VAT will be due on any taxable benefits provided on or after 1 January 2012 by way of salary sacrifice.

3 Salary sacrifice agreements entered into on or after 28 July 2011

For agreements entered into on or after 28 July 2011 VAT must be accounted for in accordance with the guidance in Revenue and Customs Brief 28/11. With effect from 1 January 2012 VAT will be due on amounts of salary foregone in return for taxable benefits.

HMRC Brief 36/2011 4 October 2011

Four-year cap – repayment out of time

The taxpayer business claimed a repayment of VAT, which it had overpaid in error. HMRC refused the claim on the basis the tax related to accounting periods outside the four-year time limit in which repayment claims could be made.

The taxpayer appealed.

The overpayment came to light when the taxpayer discovered in 2010 that a problem with its accounting software meant input tax on invoices processed in the last quarter of the year, but paid later, were not included in the VAT return.

This resulted in an overpayment in the first return of the first quarter of the new year. The error, which had been going on since 2000, was identified by neither the taxpayer's advisers nor HMRC, which had made two separate VAT inspections.

The First-tier Tribunal said it did not have the power to extend the four-year time limit; the late claims could not be accepted.

The taxpayer's appeal was dismissed.

Independent VAT consultant Neil Warren said an advantage of the four-year cap is that the Revenue cannot adjust underpayments beyond the time, so the rules are fair.

The argument, put forward by the taxpayer, that a VAT officer should have identified an error, was 'a red herring', added Mr Warren.

'Visits often check one aspect of an accounting system in relation to VAT. It is not a full health check of the business's VAT affairs that gives assurance everything is totally correct.'

G F Mercer Ltd (TC1386)

Intrastat returns – changes from April 2012

HMRC has announced two changes to the way Intrastat declarations are collected. From April 2012, it will become mandatory to submit Intrastat declarations electronically.

At the same time, the due date is to be brought forward, from the last day of the month (ie the month following the month to which the trade relates) to the 21st day of that month. Thus a declaration for April 2012 will be due by 21 May 2012.

VAT registration issues: technical note (Lecture B685 – 27.53 minutes)

This article reviews recent developments on VAT registration, where there have been several cases which illustrate a number of the rules:

- compulsory registration;
- exception from registration;
- voluntary registration, including entitlement to register;
- deregistration, including compulsory deregistration;
- the treatment of different businesses carried on by a single taxable person;
- business splitting directions under Sch.1 para.1A.

Compulsory registration - No defence without records

An individual commenced to trade as a retailer from October 1997. She submitted income tax returns that showed turnover above the registration threshold. When HMRC finally picked this up in 2009, they issued a backdated notice of compulsory registration with effect from January 2002, assessments to collect the unpaid VAT (£21,000), and a belated notification penalty. The VAT was calculated using the FRS percentage. Following correspondence, the assessment was reduced to £9,365, and the penalty to 15% of that.

It appeared that the trader was confused about the difference between profits subject to income tax and turnover which might trigger a liability to VAT. She argued that her profit had been very low, which was irrelevant. It was difficult for her to establish any figures to displace those used by HMRC because she had retired and destroyed her records. Because she had not submitted a VAT return, she was not entitled to dispute the amount of the assessment; and the Tribunal agreed with HMRC that the self-assessment returns showed that she should have been registered for VAT from 1 January 2002.

The Tribunal cancelled the penalty – presumably, but not explicitly, as an act of mitigation under s.70 VATA 1994. The delay in contacting the trader until 3 years after she had closed her business was unreasonable and unjustified.

First Tier Tribunal (TC01314): *Susan Evans*

Compulsory registration - No defence without returns

A trader ran a takeaway as a sole trader for some years before incorporating on 1 December 2005. An officer made an unannounced visit to the premises on 2 February 2008 and concluded, after enquiries, that the business should have been registered from 1 December 2002 onwards. The company would have been registered immediately under the TOGC provisions. The trader appealed against notices of compulsory registration and the related assessments for underdeclared tax.

The Tribunal considered arguments about the registration issue and concluded that, even if some criticisms of the HMRC calculations were valid (which was not necessarily the case), the registration threshold had been crossed. The appeal against registration was therefore dismissed.

As the trader had not submitted returns, it was not possible to appeal against the assessments.

First-Tier Tribunal (TC01058): *Khan Tandoori II & Khan Tandoori (NW) Ltd*

Exception from registration

In June 2009 a trader was issued with a notice of compulsory registration to take effect from 1 December 2007. He appealed, arguing that he should be eligible for exception from registration on the basis that his taxable turnover for the year following registration would not exceed the deregistration threshold.

The trader had gone into semi-retirement in June 2007, retaining only a small part of the family business to keep him occupied – the renting of dehumidifiers. His attempt to retire coincided with catastrophic local flooding, and his expected turnover of £30,000 – £40,000 turned out to be over £300,000 for the year to 31 March 2008. His accountants had asked for exception from registration in August 2007, but after seeing the annual accounts they wrote to HMRC again for a further ruling. HMRC ruled that he was liable for registration under the "forward look", which does not have an exception.

The Tribunal examined the precedent cases, in particular *Gray v HMRC*, and also the correspondence which showed the basis on which HMRC had taken their decision. It could not be said that the decision had been unreasonably made, so the appeal could not succeed.

First Tier Tribunal (TC01292): *Roy Victor Evans t/a Britannia Services*

Voluntary registration

Two individuals incorporated a UK company intending to purchase second-hand cars in Spain and sell them to customers in other EU countries (but not the UK). The company applied for UK VAT registration which HMRC refused, arguing that it did not intend to carry on a business here.

The purpose of the UK registration appears to have been to take advantage of triangulation. If a Spanish company had been used, the Spanish sellers of the cars (e.g. leasing companies) would have had to charge Spanish VAT, which would have had to be recovered later. To improve cash flow, the traders preferred to make a zero-rated despatch possible.

HMRC argued that there was no objective evidence of an intention to trade at all. The director, who was a retired accountant (described as a man of total integrity by the Tribunal), explained that it was difficult to start to trade – or even to take preliminary steps – without the VAT registration that was the whole basis of the business.

The Tribunal sympathised with HMRC's concerns about MTIC fraud, but concluded that they were misplaced here. It was satisfied with the director's evidence of an intention to trade, and the business was therefore entitled to registration under Sch.1 para.10(2) VATA 1994.

First Tier Tribunal (TC01315): *Car Factors Ltd*

Cancellation of registration

A builder had been VAT registered since 1973, but had not traded since being made bankrupt in 2004 (for the second time). He submitted nil returns until 2009, when he claimed £10,000 in input tax. HMRC ruled that he was not carrying on a business and directed that he should be deregistered. The builder argued that he intended to revive the business and had a contract to build a house.

The Tribunal considered that the direction to cancel the registration was not valid. Sch.1 para.13 VATA 1994 requires a cancellation to be from the time when the trader ceased to be registrable, or such later time as is agreed between HMRC and the trader. As no later date had been agreed, the direction to cancel could only be backdated to the time that HMRC concluded the trade had ceased. If a current date was used, it had to be shown that the trader was not currently entitled or required to be registered; the Tribunal was satisfied that the current building project amounted to economic activity, and the direction to cancel the registration was therefore invalid.

The remaining problem was the deductibility of the VAT. Much of this appeared to relate to the trader's continuing disputes arising out of his bankruptcy, rather than to the building project. This would not be deductible because it did not relate to the business; the Tribunal explicitly rejected the trader's argument that he needed to sue his insolvency practitioners in order to be able to trade. Other VAT appeared to be private or unrelated to building, and some had not been claimed within the relevant time limits. The Tribunal adjourned the hearing for the parties to attempt to agree how much of the VAT was referable to the taxable activity.

First Tier Tribunal (TC01320): *Gardner & Co*

Another company was deregistered by HMRC after the director cancelled an initial meeting to inspect the company's records. Answers to enquiries by telephone had been vague and evasive, and the director did not turn up to the hearing. The Tribunal accepted that HMRC had good reasons for grave misgivings about the company, and was entitled to cancel its registration from the outset.

First Tier Tribunal (TC01289): *System Fabricators Ltd*

Voluntary registration and EDR

A sole trader ran a property and investment business. She applied to be registered on 28 July 2008 and asked for an EDR of 1 August. She submitted her first VAT return in November 2008, claiming pre-registration input tax on certain supplies which included services received more than six months before the EDR. Some £12,700 was disallowed as a result.

The trader asked for her EDR to be adjusted to an earlier date to enable her to claim the VAT. HMRC refused. The Tribunal did not consider that there were exceptional circumstances which required HMRC to agree to amend the EDR. The trader argued that she had made a "genuine mistake" in choosing 1 August; however, it was really a mistake in failing to appreciate the consequences of that choice, rather than the sort of mistake that might lead to the exercise of HMRC's discretion.

Her argument that there had been a "departmental error" in that her accountants had chosen the wrong date was rejected. In the context of the guidance about changing EDRs, it was clear that the "department" was HMRC, and HMRC had not made an error here.

First-Tier Tribunal (TC01177): *Irene Middleton t/a Freshfields*

Business splitting?

The Tribunal considered a case on business splitting to produce a harsh result by the letter of the law: had they been able to decide on purely compassionate grounds, they would have allowed the appeal.

The trader considered that his two businesses were sufficiently different to be treated entirely separately for VAT – one was a restaurant and the other was an electrical retailer. However, this was a misapprehension – his only hope before the Tribunal was to plead that one of the businesses had been carried on by a partnership and the other as a sole trade (if so, the difference would then have prevented a business splitting direction).

The individual had taken over the restaurant business, which was next door to his main electrical trade, in the hope that he could rapidly do a property deal with the Co-Op which was located across the street. He was supported financially in taking over the premises by an elderly lady with whom he signed a very brief "partnership agreement". This was the basis of the appeal – that the elderly lady was his partner in that trade.

Unfortunately, it appeared unlikely that she was ever intended to participate in trading profits. The restaurant had shut down at the time of the transfer (so HMRC argued and then dropped registration on the basis of a TOGC); it was only started up again by the appellant because the Co-Op deal was delayed and he needed to pay the rent. In the end, the Co-Op deal fell through and the restaurant business was closed; it appeared that substantial losses were made and the appellant probably faced ruin, but he still paid the lady back the £10,000 she had invested with a further £1,000 on top. HMRC argued that this showed it was in reality a loan; the Tribunal considered that it showed the appellant was a man of honour.

The Tribunal also asked what direct tax returns had been filed in respect of the two businesses – the answer, described by the chairman as "unfortunate", was that none had been filed.

Overall, the Tribunal decided that both businesses had been operated as sole trades. The trader was under an honest misapprehension that he did not need to aggregate their turnover, but that did not excuse him under the law, nor did it constitute a reasonable excuse. The assessment and a 15% penalty were both confirmed, but the chairman expressed the hope that HMRC would go about the collection of the tax with as much compassion as they could.

First-Tier Tribunal (TC01117): *James Yarlett t/a Beanies-by-Night and t/a J Y Electricals*

More than one business

A trader carried on three separate businesses, all as a sole trader – interior design, the sale of pianos and the provision of piano lessons. The third is exempt. She registered in 2002 in respect of her interior design business but failed to account for any VAT on the sale of pianos. When this was picked up by HMRC in 2006, they raised an assessment for £10,000.

The trader's accountants protested that the trader had contacted the National Advice Service at the time she registered and was told that she would not have to account for VAT on the piano business until it reached the registration threshold in its own right. HMRC had records of a number of calls to the NAS, but none of them dealt with this particular matter.

HMRC's counsel argued that in any case the Tribunal did not have jurisdiction to hear an appeal about misdirection (or legitimate expectations). The Tribunal set that point aside, because it concluded that there was in any case insufficient evidence that a misdirection had taken place. The appeal was therefore dismissed without a decision on jurisdiction.

First Tier Tribunal (TC01156): *Ann Hood*

Wrong direction

HMRC issued a "business splitting direction" under para.1A Sch.1 VATA 1994 in respect of:

- a bed and breakfast business run as a sole trade by a farmer's wife;
- a farming partnership carried on by the husband, the wife and their son.

The Tribunal noted that its jurisdiction was supervisory: it could only overturn the direction if it was satisfied that it had been unreasonably made. The Tribunal therefore had to examine the reasons HMRC gave for concluding that there were close financial, economic and organisational links between the businesses:

(1) The farm pays for electricity used by the farm and the B&B

(2) The farm pays for domestic fuel used by the farm and the B&B

(3) The farm pays the rates bill

(4) The single telephone line used by the farm and the B&B is paid for by the farm

(5) The farm pays for the insurance

(6) There are no cross-charges between the two businesses for rent or a share of utility or other bills

(7) The B&B operates from the farmhouse using three bedrooms as guest accommodation

(8) The farmhouse kitchen is shared by the farm and the B&B which is used to cook and serve breakfasts for the guests. It is also used for the domestic use of the appellants

(9) The B&B operation is too small to be viable without use of the farmhouse. The B&B does not have premises of its own and is dependent on the use of the farmhouse. If it had to rent a farmhouse in its own right, then the business would not be viable.

(10) Advertising on the internet for the B&B show the name "Parsonage Farm Bed and Breakfast". The accommodation binds itself to the farm and depends upon the farm for its appeal.

The appellants argued that para.1A has to be considered before the linkage between the businesses. If the operations have not been "artificially separated", it does not matter whether there are financial, economic and organisational ties between them – a direction cannot be sustained. The Tribunal did not accept this, interpreting the words "in determining whether ... any separation ... is artificial, regard shall be had ..." as indicating that the linkage is part of the decision on artificial separation, not a subsequent step.

The issue therefore depended on whether the two businesses were independent operations dealing with each other at arm's length. Crucially, the officer's visit notes listed the factors he had considered when inspecting the operations, and the majority of factors was either against a direction or neutral.

This list will be of interest to other similar businesses which are at risk of a similar visit:

Factor		Weight given by Mr Taylor
B&B run from farmhouse by Mrs Forster with 3 bedrooms as guest rooms		In favour of direction Premises used for farm and B&B
Mrs Forster has own records, bank account, and annual accounts, and considers the B&B to be her own separate business which she has operated since the 1970s		Against direction
Mrs Forster takes bookings, cooks the breakfasts, and cleans the rooms herself with the help of a part-time cleaner that is paid for by the B&B		Against direction
In the case of absence or illness, bookings are cancelled		Against direction
Mr Forster plays no part in the B&B		Against direction
The current turnover of the B&B business is about £8000 which Mrs Forster does not intend to expand as she is 67		Neutral
There has been no DEFRA grant		Neutral
The only refurbishment costs have been a new carpet which was bought by the B&B		Against direction
The kitchen is shared for domestic use and for cooking and serving breakfasts for the guests		In favour of direction Shared use of kitchen
Direct costs of B&B such as furnishings, part-time cleaner, food and cleaning materials are all paid for by the B&B		Against direction
Mrs Forster is responsible for any profits or losses of the B&B and declares the income on her own tax return		Against direction
The farm pays for rates, domestic fuel, electricity, insurance and phone		In favour of direction
There are no cross-charges from the farm to the B&B for rent or a share of the utility bills		In favour of direction
John has nothing to do with the B&B		Neutral

The failure to recharge the costs of operating the business could be damaging, but the appellant argued that these costs were reflected in a disallowance of private expenditure in the partnership accounts. This disallowance was charged to Mr Forster’s drawings account rather than Mrs Forster’s, but that was not relevant: it was Mr Forster, not the firm, who was supporting the bed and breakfast operation.

The Tribunal also considered that it was very important that the bed and breakfast operation had been started in 1975 when Mr Forster’s parents had been the main partners in the farming business. This was not taken into account by the officer. Insufficient weight had been given to the fact that Mrs Forster ran the business herself, separately from the farm, keeping her own accounts and records. There were insufficient links to justify the direction, and it had not been reasonably made.

First Tier Tribunal (TC01319): *Forster and others*

Campaign to find the unregistered

The campaign to find unregistered traders, announced on 20 May, was strengthened by an offer of reduced penalties if traders notified HMRC of their liability to register by 30 September. The offer was phrased as follows:

"*If they make a full disclosure, most face a low penalty rate of 10 per cent on VAT that has been paid late. They will also be invited to disclose any other tax arrears. Where they have to pay a penalty on undeclared tax other than VAT, this will be lower than the customary penalty of up to 100 per cent charged to those who fall outside the opportunity.*"

HMRC said they would send out 40,000 letters to invite people to come forward – presumably to those who they thought might have something to confess – with the implication that higher penalties would be due if the offer was not taken up in good time. The announcement states that voluntary disclosures following earlier campaigns have yielded £500m, with another £100m coming from follow-up activity afterwards.

NAT 60/11; /www.hmrc.gov.uk/ris/hmrc-campaigns.htm

A follow-up press-release reminded business to come forward by the deadline to enjoy the offer of reduced penalties, and added that "Target sectors include: construction, business services, hair and beauty, hotels and catering, retail distribution, recreational services, motor vehicle distribution and repair, sanitary and domestic services, agriculture and horticulture, property and road haulage".

NAT 70/11

Meanwhile, the "plumbers' safe tax plan" expired on 31 August – plumbers had to register with HMRC by that date to benefit from the offer of lower penalties for all taxes.

NAT 65/11; www.hmrc.gov.uk/plumberstaxsafeplan

HMRC do not appear to have waited for the end of August before moving against those plumbers who have not taken advantage of the plan. Five have been arrested and around 600 are under civil investigation for failing to pay the right amount of tax. Some of those involved owe up to £150,000.

NAT 68/11

Updated VAT 1 notes

The online notes which help with the completion of the registration form have been updated.

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ShowContent&id=HMCE_PROD1_026388&propertyType=document

Contributed by Mike Thexton