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WORKING FAMILIES' TAX CREDIT (WFTC) AND DISABLED PERSON'S TAX CREDIT (DPTC)

Introduction

WFTC and DPTC were introduced on 5 October 1999 and replaced Family Credit (FC) and Disability Working Allowance (DWA) respectively. The new tax credits are administered by the Inland Revenue. Applicants apply to the Inland Revenue's new Tax Credit Office (TCO) and, if successful, are awarded a tax credit for a period of 26 weeks. From October 1999 to April 2000 all recipients will receive their award direct from the Inland Revenue.

From April 2000 WFTC and DPTC will in appropriate cases be paid to employees through the payroll. This article describes what employers will have to do from that date and what they should be doing now in preparation. It also directs employers to sources of further information and outlines the Revenue's programme of targeted advice and guidance for employers.

From October 1999

Employers will have seen little change from the introduction of the tax credits on 5 October. However, because more people are eligible for WFTC and DPTC than were eligible for FC and DWA, employers may find that over the next few months there is an increase in the number of employees who ask them to verify earnings in support of an application for tax credit.

From April 2000: Inland Revenue's role

From April 2000, where the applicant is an employee, and his or her employer operates a PAYE scheme, the TCO will in all appropriate cases:

- make initial tax credit payments direct to the employee, and
- notify the employer when to start paying tax credit, how much to pay and when to stop. Employers will be given at least 14 days' notice in respect of a weekly-paid employee and at least 42 days' notice in all other cases.

Where a couple have elected that the award be paid to the non-working or self-employed partner, or where an applicant is not an employee of an employer who operates a PAYE scheme, the TCO will continue to pay the tax credits direct to the applicant.

(continued on page 692)

From April 2000: employers' role

Employers will be required to

- *pay the tax credits with pay through the payroll* in accordance with the TCO's Employer Notification to Start Paying Tax Credits, unless told by the TCO to stop sooner or until the employee leaves the employment;

- *show the tax credit paid on the employee's payslip* as a separate item;

- *set off the tax credit payments against PAYE tax, NICs and student loan deductions* due to be paid to the Revenue. If their PAYE tax, NICs and student loan deductions due to the Revenue are not expected to be enough to cover the tax credit payments, employers will be able to apply to the Revenue for advance funding to cover the shortfall;

- *where the employee leaves the employment*, stop paying the tax credit and complete and issue to the employee within 7 days a Certificate of Payments, showing the amount of tax credit paid through the payroll and the period the payments cover. The employee will send this to the TCO so that direct payments by the Revenue can resume;

- *at the end of the month or quarter*, show on form P32 or P30BC the total PAYE tax, NICs and student loan deductions due to the Revenue in respect of all employees (reduced by the amount of tax credits paid to employees) and remit to the Revenue only the net tax, NICs and student loan deductions;

- *at the end of the tax year* enter the total tax credits paid in the current employment on the P14 and P60 forms for each employee; and the total tax credits paid to all employees in the year on the P35, together with the total amount of Revenue funding received in the year.

As with the tax system generally, penalties could be imposed on employers who do not take reasonable care to pay the tax credits as directed by the Revenue. The level of penalties will be linked to the circumstances of a case and the maximum - £3,000 per employee - will apply only in the most blatant cases.

What employers need to do now

A high profile advertising campaign began last month to alert potential applicants to the introduction of the new tax credits in October. WFTC has been branded as a 'Better Deal for Working Parents'. Remember, though, that initially all payments are being made directly by the Inland Revenue. Payment through the payroll does not start until **April 2000**. Between now and then:

- *Employers with computerised payrolls* should check with their IT department or payroll software supplier that the payroll system will be able to process tax credits from April 2000. As each system is different, a check should also be made on the facilities that will be offered and the amount of manual intervention that will be required when processing tax credits.

- *Employers with manual payrolls* should review any stationery they use for their payroll which is not supplied by the Inland Revenue. Employee payslips, for example, will need to have space for recording a tax credit payment and describing it as a tax credit.

- *All employers* should consider whether they need to review their cash flow budgeting procedures after April 2000, given that they may have to pay out as tax credits some or all of the PAYE tax, NICs and student loan deductions which they deduct from their employees' pay, rather than having the use of that money until the date by which they are required to pay it to the Revenue.

How the Inland Revenue will help

From 1 November employers will be able to ring the Employer Helpline (0345 143 143) with queries about the tax credits. From that date the Helpline will be open from 8 am to 8 pm Monday to Friday and from 8 am to 5 pm on Saturdays, Sundays and bank holidays, except on Christmas Day, Boxing Day and New Year's Day (and, for 1999, the Millennium holiday).

From November, we are running a series of seminars to focus on the practical aspects of the introduction of WFTC and DPTC. The seminars are designed to be of special help to small employers, giving them the opportunity to be taken in detail through the new forms.

All employers are invited to register an interest in attending one of these seminars by returning the card enclosed with this Tax Bulletin.

Further advice and guidance

An updated and expanded version of the Inland Revenue booklet, *Working Families Tax Credit and Disabled Person's Tax Credit*, first published last December, will be available free of charge from the Employers' Orderline from November 1999 - and will in any event be issued to all employers as part of the next Annual Pack. The December 1998 booklet is still available from the Employers' Orderline and on the Inland Revenue website (www.inlandrevenue.gov.uk).

In January we will be placing advertisements in the trade press, reminding employers that they should:

- Double check they are geared up for paying tax credits through the payroll where appropriate.
- Look out for the employers' Annual Pack which will be issued in February.

We also plan to produce a video guide to WFTC for employers.

February's Annual Pack will contain:

- Detailed and comprehensive guidance.
- Sample forms.
- Helpline details.
- Details of how employers can order
  - Forms
  - Duplicate guidance material
  - The video guide.

STAMP DUTY RESERVE TAX: CHANGES TO INTEREST RATES; PENALTIES FOR FAILURE TO NOTIFY LIABILITY; INTERACTION WITH STAMP DUTY

This article notes the changes to the arrangements for interest on late paid and overpaid SDRT from 1 October (announced in a Press Release of 10 September 1999), describes a modification to the practice about penalties for late notifications of SDRT (set out in an article in the October 1998 edition of Tax Bulletin, page 589) and highlights some points on the interaction of SDRT with Stamp Duty from 1 October.

Background

Broadly speaking, SDRT is charged on agreements to transfer shares where no stock transfer form is used (and accordingly no Stamp Duty is paid). Most SDRT arises on transfers of dematerialised shares held in CREST, where the SDRT concerned is accounted for centrally through CREST. But not all securities are able to be held in CREST and so SDRT also arises in a variety of other situations.

In such cases, the accountable person has to give written notice of each charge to SDRT, and to pay the SDRT due, on or before the accountable date. Where the shares are purchased on an exchange the accountable person will generally be one of the brokers involved in the transaction. Otherwise the purchaser is accountable.

The accountable date is the seventh day of the month following the month in which the trade date of the transaction occurred. Interest is charged from the accountable date on any SDRT paid late. Late notices may also attract penalties. The level of penalties depends on how late the notice is provided.

More detailed background information was contained in the earlier article.

Changes to SDRT interest rates from 1 October 1999

Before 1 October the rates of interest charged on late paid SDRT and paid on SDRT repayments were the same. But from 1 October, as with other taxes, the interest rates will differ. The rates for SDRT (and for Stamp Duty) will be the same as those for income tax. Details of these changes can be obtained from leaflets issued by the Stamp Office, obtainable from the Stamp Office helpline - 0845 6030135 or on the Inland Revenue website.

Penalties for failure to notify SDRT liability on time

As set out in the previous article, the rules depend on whether a late notice is provided within a year of the accountable date, or after a longer period. No changes are being made to the practice regarding notices given more than one year after the accountable date, which remains as set out in the previous article.

In the light of the changes to interest rates, and a review of the first year of operation of the practice on penalties in the previous article, the practice in the case of notices provided within a year of the accountable date is being modified in the case of multiple late notices made by an accountable person. This article sets out the revised position, which will apply in relation to notifications relating to transactions for which the accountable date was on or after 1 October 1999.

Section 93(2) TMA 1970 (as applied to SDRT by SI 1986/1711) states that each failure to give timely notification will incur a penalty of £100; that is to say that each transaction which is accounted for to the Stamp Office after the accountable date may attract a potential penalty of £100. While composite monthly notifications by an accountable person are administratively convenient, a late notice covering, say, 10 transactions is potentially liable to 10 penalties of £100. The amount of the penalty in relation to each individual transaction is in practice limited so that it does not exceed the SDRT due on the transaction concerned.

From 1 October, to coincide with the introduction of a fully up to date interest rate regime, where there is a composite notice relating to a number of transactions in a single month, the Stamp Office will normally only seek a single £100 penalty charge, provided that the accountable person takes steps to eliminate sources of recurrent error. So, if a composite notice relating to 3 transactions in one month and 4 transactions in the next month is sent in after the accountable date for the second month, the penalty would normally be £200 rather than £700.

If the total SDRT relating to the transactions in a single month is less than £100, then the lesser figure would be used, in keeping with the existing practice. So if in the example above the 3 transactions in the first month involved an aggregate amount of £50 SDRT, and the 4 transactions in the second month involved over £100 then the penalty would be £150 rather than £200.

Interaction with Stamp Duty

Where a stock transfer form relating to residual securities (securities that cannot be settled in CREST) is stamped within 60 days of the date of the transaction, it remains the case that the Stamp Office will not seek interest on the SDRT in the meantime and no notice need be given. However, should a stock transfer form not in fact be duly stamped within this time then interest on the unpaid SDRT will still run from the accountable date. In addition, if a notice was not delivered by that date the penalties described above will apply.

It should be noted here, and more generally, that if a stock transfer form is presented for stamping more than 30 days after it is executed, and the duty is paid late, then interest will run on the Stamp Duty and there may be a penalty for late stamping.

The introduction of interest on Stamp Duty from 1 October, in parallel to the changes to SDRT also means that the procedures described in paragraphs 1.13 of the (February 1998) SDRT Guidance Notes no longer apply either in ‘wait and see’ cases or where a document has been presented for an adjudicated relief. In future the question of SDRT will only be raised where difficulty is experienced in securing the stamping of the document.

PRIVATE FINANCE INITIATIVE PROJECTS: STAMP DUTY

Introduction

This article considers the correct Stamp Duty treatment of the documents likely to be encountered in a typical PFI scheme.

This article has been written following detailed consultation between Inland Revenue Head Office technical specialists and representatives from various parties advising public and private sector bodies. Background information about this working group is in the article on page 642 of the April 1999 edition of Tax Bulletin.

As indicated in that earlier article, PFI transactions are by their very nature complex. So it is important to emphasise that the Stamp Duty position in any particular case will depend on an analysis of the form of the particular documents to ascertain their true legal effect, and that what follows is based on straightforward situations and is necessarily only intended to give general advice. At the end of the day, the treatment of a particular transaction will always depend on its own particular facts.

Background - A Typical Transaction

In a typical PFI transaction, a public sector entity - e.g. an NHS trust - agrees to acquire services. Typically a specially formed private sector company agrees to carry out the project and supply the services. The public sector body is referred to as “Purchaser”. The private sector supplier is referred to as “Operator”.

The main documents will normally be:

(a) an outright transfer (“Project Land Transfer”), or head lease at a peppercorn rent (“Project Land Head Lease”), of the project site and buildings from the Purchaser to the Operator;

(b) a leaseback (“Project Land Lease”) of the project site and buildings from the Operator to the Purchaser. Again, this lease is normally at a peppercorn rent;

(c) if the Purchaser has identified surplus land which it owns and can contribute to assist the economics of the project, a transfer of such surplus land by the Purchaser to the Operator (“Surplus Land Transfer”);

(d) a master agreement (“Project Agreement”):

- providing for the making of the above transfers or leases;
- regulating the provision of all of the services which the Operator is to supply; and
- providing for the Purchaser to make periodic payments, called the “Unitary Charge”, to the Operator in return for the facilities and services under the project.

Transfer or Lease of The Project Land

In these transactions, the consideration for the transfer of the project site under the Project Land Transfer, or for the grant of the Project Land Head Lease may well be, or include, the undertaking by the Operator to carry out building or refurbishment works on the Project Land.

If such an undertaking were the only consideration, no ad valorem duty would be chargeable, as (in particular) a contract to carry out works is not “consideration [which] consists of property” for the purpose of Section 241 FA 1994. So the Project Land Transfer or Head Lease would only attract fixed duty.

Section 241 FA 1994 charges ad valorem duty on a transfer of land or the grant of a lease in exchange for any property (alone or with other consideration). So a charge under that section would arise if the Operator's grant of the leaseback to the Purchaser - the Project Land Lease - represented part or all of the consideration for the Project Land Transfer or Head Lease.

The article in the August 1995 edition of Tax Bulletin (paragraph 16, page 234) described the situation where, in the case of a sale and leaseback, there is a contract of sale for a price and a separate agreement for lease (rather than the leaseback forming part of the consideration given for the sale, in effect by way of exchange). In such situations the sale is liable to duty by reference to the price, and the leaseback is charged by reference to any premium and rent.

It is quite possible that transactions which this article considers may fall to be treated in this way. For example, if the various documents:

- clearly identify the only consideration as the Operator's undertaking to carry out the building works; and
- do not describe the grant of the Project Land Lease as the consideration for the Project Land Transfer or Head Lease

the Stamp Office would normally expect to charge the Project Land Transfer or Head Lease only to fixed duty.

The Project Land Lease

Exemptions from ad valorem stamp duty exist for leases in favour of ministers of the Crown, the Treasury Solicitor, NHS Trusts and charities. However, where a PFI transaction involves other types of body - notably local authorities - the liability arising on such documents falls to be considered.

The Project Land Lease is likely to be expressed to be at a peppercorn rent. And so in normal circumstances, in accordance with long standing practice, only fixed duty would apply. But, as with leases generally, it is possible that in some cases another amount (here, potentially a part of the unitary charge) should also be properly regarded as forming part of the rent for Stamp Duty purposes, if that is the true legal effect of the transaction.

If, in a case where the position is doubtful, a Project Land Lease is presented for stamping on the basis of a rational apportionment of the expected unitary charge between the part to be regarded as rent and the part to be regarded as relating to services, the Stamp Office would normally expect to accept the taxpayer's approach.

It should be noted that the position for Schedule A purposes (set out in the next article) is not the same as that for Stamp Duty.

Surplus Land Transfers

A Surplus Land Transfer, by the Purchaser to the private sector Operator, will normally be made without immediate monetary consideration. The following points of interest arise:

(a) however, should there be some immediate monetary consideration, it would attract ad valorem duty. This may, for example, arise where the Purchaser has waived exemption from VAT in relation to the surplus land in question, and the Operator makes a payment of VAT on the transfer.

(b) a charge to ad valorem duty under Section 241 FA 1994 will not normally arise on the basis that there is an exchange, unless the documentation describes the grant of the Project Land Lease as consideration for the Surplus Land Transfer, or describes the Surplus Land Transfer as consideration for the grant of the Project Land Lease.

(c) in general, the transfer of the surplus land will be described as made in one of three ways:

- by way of a contribution to the Operator's cost of carrying out the project works, or
- in satisfaction of a specific monetary amount of the future unitary charge, or
- in consideration of the Operator agreeing to accept a lower level of unitary charge than it would otherwise have done.

Various matters arise from the situations described in (c) above.

(1) Where the surplus land is transferred as a contribution towards expenses of the Operator on the building works, and there is no other consideration, the Surplus Land Transfer will only attract a fixed duty. This is because the Operator's agreement to execute the building works is not "property" for the purposes of Section 241 FA 1994. Where there is other consideration, of course, it may, depending on the facts, attract duty.

(2) If the Surplus Land Transfer is made in satisfaction of an amount of the future unitary charge, or in consideration of the Operator agreeing to accept a lower level of unitary charge than it would otherwise have done, it will not normally attract ad valorem duty. Section 57, SA 1891 does charge duty on conveyances made in satisfaction of a debt, but it only applies where the debt is due or accruing due at the date of execution. Normally that will not be the case in the type of transaction which the article considers.

(3) Where surplus land is transferred under the type of arrangements described above, the project documentation will normally contain rules about what is to happen if the Operator later re-sells the land at a profit. Sometimes, the Operator will be required to pass back a proportion of the profit to the public sector Purchaser by way of a contingent price for the surplus land. In that case, for stamp duty purposes, the contingency principle applies. If the documents provide that a minimum or maximum additional amount may become payable, that amount will attract ad valorem duty. If an amount cannot be determined under the contingency principle, then ad valorem stamp duty will be payable on the market value of the surplus land, applying Section 242 FA 1994.

(4) Sometimes, any profit on a resale is to be retained by the Operator but part or all of it is to be brought into the economics of the project. The amount in question may be treated:

(i) as itself a contribution to the Operator's cost of carrying out the project, or

(ii) as satisfying a specific future amount on account of the unitary charge.

In either case the principles set out earlier in this article should normally mean that there will be no charge to ad valorem duty.

Project Agreement

The Project Agreement normally provides for all of the intended land transfers or leases. As an agreement for one or more leases, it will be liable to the same ad valorem stamp duty in respect of each such lease as if it were that lease itself, and it will be entitled to the same exemptions as the actual leases would have qualified for.

In the same way as for other documents, the stamp duty on a Project Agreement, as an agreement for lease, will attract interest, and may attract a penalty, if it is presented for stamping out of time. The time allowed for stamping the Project Agreement is 30 days from the date of execution unless it is presented with the granted lease when the 30 days start to run on the execution of the lease.

If the parties intended to stamp the Project Agreement and the related leases together, but the leases were not granted because a dispute had arisen, this would be a factor we would take into account in considering the mitigation of any penalty arising on stamping the agreement late.

Credit for stamp duty paid on a Project Agreement is allowed against the duty payable on a lease granted pursuant to that agreement - provided that the lease is in conformity with the project agreement or relates to substantially the same property and term. Exceptionally, there may be a major change of plan during the course of a PFI scheme. Where difficulties occur, especially where as a result of matters beyond the parties control, we would expect to apply this rule in a common sense way.

PRIVATE FINANCE INITIATIVE

This article addresses the appropriate schedule of charge of income arising from a PFI deal involving a lease of fully serviced accommodation. It reflects the Revenue's view of how such income should be assessed, and the consequential effects on loss relief available.

Schedule A or Schedule D Case I?

General Principles

1. Many PFI schemes will be structured in the form of a lease granted by the body commissioning the work - "the purchaser"- to the service provider - "the operator" - followed by a lease back from the operator to the purchaser. Where this happens - or similar arrangements are entered into under which the operator acquires an interest in or rights over land in the UK and derives sums from exploiting that interest - it will be necessary to consider whether all or any part of the payments made to the operator are chargeable under Schedule A. A similar problem was addressed in the previous article in relation to stamp duty. As foreshadowed there, the application of the legislation in Part I ICTA 1988 will not necessarily give the same result as stamp duty law and practice.

2. If the operator itself has an interest in land, and grants rights of occupation to the purchaser (normally by way of a sublease or licence to occupy), some part of the unitary charge will necessarily be attributable to the right of occupation, and hence assessable under Schedule A. This will be so even where the lease prescribes in terms a rent of a peppercorn, and even though payment of the unitary charge is contingent on performance by the operator of other services to specified standards. The Revenue would expect the part of the unitary charge payable for the right to occupy land to be calculated on a just and reasonable basis.

3. It will be a question of fact whether the "other services" referred to in the previous paragraph are sufficient to constitute a trade on first principles. **If** the operator is carrying on a trade, the Revenue will accept that it is a "trading company" for the purposes of consortium relief (Section 413(3)(c) ICTA 1988) provided that trade is its sole or main activity. The test is what the company does. The mere fact that the Schedule A element of a unitary charge constitutes a significant proportion - or even exceeds 50% - of the total gross income will not **of itself** mean the company is not a trading company for

the purposes of Section 413(3)(c). The test is whether, as a matter of fact, the **main** activity of the company is trading.

4. If the operator retains the right to grant leases or licences to third parties in respect of part of the land or property in question, any sums received under such agreements will ordinarily be within Schedule A.

5. References above to payments made to or sums received by the operator do not include payments of interest for late settlement, payments under normal commercial indemnities or other non-recurring commercial payments. The tax treatment of such amounts will depend on their commercial character.

Group Relief

6. In many PFI schemes the operator will be a consortium company (that is (a) a directly held company owned by the consortium members or (b) a company owned 90% by a consortium holding company as defined by Section 413(3)(b)). Where losses arise in a consortium company, group relief will be available where the consortium company is a "trading company" - that is *"a company the business of which consists wholly or mainly in the carrying on of a trade"*.

7. If a consortium company is a "trading company", any Schedule A losses (as from 1 April 1998) will be capable of being surrendered as consortium relief assuming that all the other relevant conditions are met.

8. In determining whether a consortium company is a "trading company", it will be necessary to establish what the company mainly does. If its main activity is the provision of services - and the provision of accommodation (and the generation of rental income) is ancillary to that - then the company will ordinarily be a trading company as defined by Section 413(3)(c).

9. As discussed in paragraph 3, it will be a question of fact what a company's main activity is. It will be necessary to look not merely at the level of income generated by each activity but to consider, for example, how the company's resources (e. g. management time, capital employed etc.) have been used.

10. There are PFI cases where a Revenue view on the schedule of charge has already been sought in accordance with the terms of Code of Practice 10, and where agreement has been given that the whole of the unitary charge is assessable as trading income. The Revenue will not seek to revisit the treatment of any such case.

ADVANCE PRICING AGREEMENTS: THE INLAND REVENUE'S EXPERIENCE AND EXPECTATION OF THE BILATERAL PROCESS FOR GUIDANCE TO ITS TAXPAYERS

General

This guidance about the procedures relating to bilateral Advance Pricing Agreements ("APAs") draws on the experiences and observations of the Inland Revenue in concluding APAs with its treaty partners under the authority of the Mutual Agreement Procedure of Double Tax Treaties. The introduction of a statutory basis for APAs in the UK (see Sections 85-87 Finance Act 1999 and the Statement of Practice issued 31 August 1999) will not in itself affect these procedures for reaching bilateral agreement, and the purpose of this guidance is to provide an outline of what might be expected to happen in the generality of bilateral APA applications in order to assist UK taxpayers in considering whether to make such an application. While this document expresses the views of the Inland Revenue, the contents have been discussed with the US Internal Revenue Service, which concurs that these guidelines broadly reflect our mutual experience.

The guidelines that follow are structured around the main stages of a typical APA. However, five major principles are fundamental:

1. Simultaneous procedures: applications should be submitted to affected tax administrations at approximately the same time. It is the applicant's responsibility to ensure that all information is provided promptly to affected tax administrations and, where meetings are held with one tax administration, to make notes which can be forwarded to the other tax administration as soon as practicable and ideally within 4 weeks of the meeting.

2. Co-ordinated approaches: the affected tax administrations should seek to co-ordinate their respective approaches as much as practicable to improve efficiency.

3. Timetable: the affected tax administrations should agree to a joint target timetable for dealing with the various stages of the application, and will, depending on the applicant's ability to provide information timeously, aim to complete the APA within 18 months of formal application.

4. Continuous contact: the affected tax administrations should keep each other informed of progress through regular exchanges in correspondence, by telephone and video case conferences, and in face-to-face meetings.

5. Competent Authority role: negotiations to conclude the APA are conducted by the Competent Authorities of the affected tax administrations. The exchanging of information between the tax administrations is also conducted under the authority of the Competent Authority. APA information is confidential and

subject to the safeguards against disclosure provided by the terms of the Exchange of Information Article of the Double Tax Treaty. The affected tax administrations should begin Competent Authority negotiations as soon as practicable, and develop provisional agreements which can be adapted as additional facts are obtained.

Pre-filing meetings

The Inland Revenue and other tax administrations have procedures for pre-filing meetings at which the potential for an APA can be discussed with the taxpayer. In the case of a potential bilateral APA the IR would expect that:

1. The same information is provided to each tax administration in advance of and in the course of such a meeting.

2. The meetings take place within a short time of each other.

3. The taxpayer makes notes of each meeting which can be forwarded to affected tax administrations as soon as practicable and ideally within 4 weeks of the meeting.

There is no objection in principle to the holding of joint pre-filing meetings, although practical difficulties may prevent such arrangements being made. The tax administrations may be prepared to participate in a joint pre-filing meeting by video conferencing arranged by the applicant.

The IR recognises that the taxpayer may decide to make an application for a bilateral APA after a pre-filing meeting with only one of the affected tax administrations. In such circumstances any pre-filing meeting with the other tax administration should be held as soon as possible after the first meeting with the same information being provided.

Formal application

The simultaneous submission of an application, as required by the respective governments, is preferred. The date of the formal application is the starting point for the target timetable. The timetable outlined below is illustrative and may need to be modified to meet the demands of particular cases.

Months 1- 3

The IR and affected tax administrations aim to complete an initial review of the submission within 3 months, and to hold a discussion (possibly using conference link) to share preliminary conclusions and concerns.

Months 4-9

The IR and affected tax administrations will then pursue enquiries independently, but will liaise with each other in order to co-ordinate enquiries as much as possible. Information received by one tax administration in response to enquiries will be made available by the applicant to the other tax administration. It may be possible to hold joint meetings, although practical difficulties may prevent such arrangements. Some tax administrations may be prepared to participate in joint meetings by video conferencing arranged by the applicant if appropriate. During this period, informal discussions between the tax administrations will take place to provide updates on progress. By the end of Month 9 the two tax administrations should be in a position to exchange formal position papers.

Months 10-12

The IR and affected tax administrations will evaluate each other's positions, obtain further information as appropriate, and aim to complete their respective analyses by the end of Month 12.

Months 12-18

Negotiations to conclude the terms of the bilateral APA by the Competent Authority staff should aim to be concluded by the end of Month 15, with formal agreement completed by the end of Month 18. The Competent Authorities will keep each other informed of the progress of APAs, and will participate in audio and video case conferences as well as face-to-face meetings in order to resolve negotiations effectively.

ADVANCE PRICING AGREEMENTS: A NOTE ABOUT THE SCOPE OF AGREEMENTS

During the consultation process about the introduction of a statutory basis for APAs some concerns were raised that an APA which determines how the arm's length provision of Schedule 28AA ICTA 1988 is to be applied might not protect a business against a challenge from the Revenue which seeks to apply the same arm's length standard but under another legal heading. During the term of an APA which agrees how matters within Schedule 28AA ICTA 1988 are to be determined in relation to specified arrangements, the Revenue would not invoke other rules bearing on arm's length pricing in relation to those arrangements in order to argue for a different interpretation of the arm's length principle. Those other rules include the application of Section 788(3)(c)(ii) ICTA 1988 and case law principles deriving from Sharkey v Wernher 36TC275 and Petrotim Securities v Ayres 41TC389.

For further information about APAs contact:

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30-34 Kingsway
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interpretations

BOOKMAKERS' PITCHES & CAPITAL GAINS TAX

Background

Up until October 1998, the pitch committee of the appropriate Bookmakers' Protection Association (BPA) allocated pitches at each horse racecourse on behalf of the racecourse authorities. BPA's covered all courses between them and combined formed the National Association of Bookmakers. On-course bookmakers obtained a "pitch" - a specified position in Tattersall's or the Silver Ring on which they erected a stand and traded. In each enclosure the pitches were arranged in rows, the front rows being regarded as the best from which to attract the most custom and the largest bets.

A bookmaker could only have one pitch at a racecourse at a time. A pitch was deemed to fall vacant if the occupant failed to regularly attend the course meetings. When a pitch fell vacant, the bookmaker with the longest satisfactory attendance in the ring concerned was given preference if they applied for it, except that in certain circumstances a member of the previous holder's family could obtain it.

Fundamental changes to the administration of on-course bookmakers and the allocation of pitches were introduced with effect from 8 October 1998, when the National Association of Bookmakers lost its control of racecourse betting rings to the National Joint Pitch Council, which is in turn administered by the Horse Race Betting Levy Board. Under the new regime, a number of changes to existing practices were introduced including the fact that although the seniority system used to determine pitch positions in the betting ring is maintained, transferring seniority by auction is now permitted. In addition, inherited seniority alone is no longer sufficient for a bookmaker to retain a ring position.

Capital Gains Tax

In our view, the right to occupy a particular "pitch" at a particular racecourse is an asset for Capital Gains Tax purposes. Section 21(1)(a) Taxation of Chargeable Gains Act 1992 (TCGA) provides that:

> "All forms of property shall be assets ... including ... incorporeal property generally."

while the decision in O'Brien v Benson's Hosiery (Holdings) Limited (53TC241) established that incorporeal rights are assets where these could be "turned to account". A disposal of such a right by way of auction is therefore a disposal of a chargeable asset. The right is akin to a licence allowing the holder to occupy a particular position on a particular racecourse without the fear of action against them for trespass but would not amount to an interest in the particular racecourse.

Date of disposal

When a particular pitch is auctioned, the date of a disposal will be the date on which the purchaser's bid is accepted, Section 28(1) TCGA, rather than the date on which the new owner takes possession of that pitch by occupying it at the next race meeting.

Acquisition costs

Where a pitch has not previously changed hands by way of auction it is our view that there is no acquisition cost to deduct on a subsequent disposal. Under the pre-October 1998 system, a pitch which had fallen vacant was effectively forfeited by the previous occupant and then re-allocated. We therefore consider that the successor has acquired the pitch without any "corresponding disposal" of it to them, either by the previous occupant or the racecourse, so the market value rule would not apply, Section 17(2) TCGA.

In any event, if the particular pitch could not be put on the market before the October 1998 changes to the rules, there would be no market value. That would apply even where a member of the family could expect to acquire it through inheritance.

Similar comments would apply in the case of a bookmaker who occupied a particular pitch back on 31 March 1982 since even though it would have been an asset to which Section 35(2) TCGA would apply, its market value on that date would again be nil.

Inherited pitches

Where a pitch has been acquired by inheritance after the October 1998 changes to the rules came into effect, however, we consider that the position will be different. Section 62(1) TCGA provides that:

> "The assets of which a deceased person was competent to dispose
>
> (a) shall be deemed to be acquired on his death by the personal representatives or other persons on whom they devolve for a consideration equal to their market value at the date of death."

Clearly a particular pitch will now have a market value and as it was an asset "of which the deceased was competent to dispose" would fall within Section 62(1).

A pitch will also be "property to which (the deceased) is beneficially entitled", Section 5(1) Inheritance Tax Act 1984 (IHTA), and where it formed part of the deceased's business, its value may qualify for Inheritance Tax business property relief at 100% if the statutory conditions are met, Sections 103-114 IHTA.

If a member of the family acquires a pitch through inheritance then where its value has been ‘ascertained’ for Inheritance Tax purposes, this will also be their acquisition cost, Section 274 TCGA.

Taper relief

As any sales would take place after 6 April 1998, the effect of taper relief, Section 2A TCGA, has to be considered and we would accept that these pitches would fall within the meaning of “business assets” in Schedule A1 paragraph 5(2)(a). Where a bookmaker had acquired their pitch before 17 March 1998 and still held it then and on 6 April 1998, the additional ìbonus yearî would be due.

Roll-over relief

While this might not apply in every case, we assume that a bookmaker might wish to put a particular pitch of theirs at one racecourse up for auction and then acquire one at another using the proceeds. We would **not** accept that these were transactions which qualified for roll-over relief under Sections 152+ TCGA. A pitch which is occupied by a particular bookmaker is neither “land” nor an “interest in land” so does not fall within Class 1 Head A2 of Section 155 and we would resist any argument that it represents “goodwill” within Class 4.

While it is certainly an intangible asset it does not fall within the terms of Lord McNaughton’s definition of goodwill in IRC v Muller & Co (Margarine) Ltd ([1901] AC217),as being the “good name, reputation and connections of a business”.

SECTION 76 FINANCE ACT 1999: CONCESSIONS THAT DEFER A CAPITAL GAINS CHARGE

Section 76 FA 1999 inserts two new sections, Sections 284A and 284B, into the Taxation of Chargeable Gains Act 1992 (‘TCGA’) with effect from 9 March 1999.

These Sections provide for a statutory charge to be applied in certain circumstances where a capital gain has been relieved by way of an extra statutory concession published before 9 March 1999 and the gain is not subsequently returned in accordance with the terms of the concession. We must emphasise, however, that the new charge **does not apply** where, as is normally the case, a taxpayer follows through the concession and returns the deferred gain in the later period.

The charge is based on the amount of the capital gain which has had the benefit of relief in the earlier period but it is not dependent upon whether that benefit was obtained before or after the passing of the Finance Act 1999. The important date is that on which the benefit of the relief falls to be recouped under the terms of the relevant concession. If that date falls on or after 9 March 1999, then a charge under Section 284A TCGA applies if the deferred gain is not returned in the normal way.

Although we expect that charges under the new legislation will be very rare, we have been asked how we will apply Sections 284A and 284B TCGA in practice. Guidance on this is now incorporated in the Capital Gains Guidance Manual at CG 13650 to 13662.

miscellaneous

PENSION SCHEMES OFFICE: SYNOPSIS OF UPDATES

The Pension Schemes Office (PSO) has issued a further four Updates to all customers on the PSO Mailing List; Update No 50 issued on 21 December, Update No 51 issued on 26 January, Update No 52 issued on 19 March and Update No 53 issued on 28 May.

Update No 50 is concerned with occupational pension scheme funding and surpluses and the interaction between Inland Revenue and Department of Social Security rules.

Update No 51 is about customer service matters. First it announces that the PSO has been successful in its reapplication for the Charter Mark award. Secondly, it advises customers about the renewal of their subscriptions for the year 1999-2000 for the PSO Mailing List and thirdly, it advises of some forthcoming new services, including publishing the Practice Notes (IR 12) and Updates on the Internet and making the Practice Notes available on CD ROM.

Update No 52 advised of the two changes to pensions legislation that had been announced in the 1999 Budget. The first was the increase in the earnings cap (also known as the permitted maximum) to £90,600 with effect from 6 April 1999 and the second was a change in the legislation to ensure that annuities paid by Free-standing Additional Voluntary Contribution Schemes (FSAVCS) are taxable under Schedule E and not regarded as purchased life annuities.

Update No 53 advised a number of amendments and corrections to the Practice Notes IR12 (1997) and also covered a variety of miscellaneous items.

Copies of PSO Updates may normally only be obtained by subscribing to the PSO Mailing List. The subscription for the year 1999-2000 is £20. Customers receive a copy of the latest edition of the Practice Notes IR 12 and a copy of each extant Update, plus a copy of each Update issued during the subscription year to 31 March 2000. An invoice may only be obtained by telephoning SR Communications Plc on 0171 463 8167 between 0900 and 1730 hours.

INLAND REVENUE ACCOUNTS OFFICE: HOSTS OPEN DAY

On the 18 and 19 November 1999 the Inland Revenue Accounts Office at Shipley will be open to accountants and agents with the aim of finding ways to deliver an improved service to our 'shared customer', the taxpayer. If you have regular contact with the Inland Revenue Accounts Offices in Cumbernauld or Shipley, this open day will be of interest to you.

The day will consist of tours providing an opportunity to see how these Accounts Offices bank and account for around £177bn each year. You will see how technology helps the Accounts Offices to sort and open thousands of items of correspondence in a few hours. At the end of January 1999, over 128,000 items were sorted and opened in less than half a day in each office. During April the Accounts Office Shipley experienced its last and biggest peak for Advance Corporation Tax. This coincided with the largest PAYE peak of the year, and resulted in post totalling 125,000 items in two days. An Accounts Office record was broken when they banked £5bn over three consecutive days.

Despite these achievements it is important to note that the Accounts Offices are more than just payment processing offices. There are significant clerical operations housed on both sites with each office providing a service to a customer base of approximately 5 million. In the 1998-99 tax year the Shipley office handled just over 870,000 items of correspondence and over 1 million telephone calls. The office in Cumbernauld handled over 1 million letters and 1.5 million telephone calls. During the open day there will be an open forum where you will be able to meet with managers from both offices and quiz them on the operational side of their business.

Customer service is at the heart of the business at Shipley and Cumbernauld and both offices currently hold the Chartermark award. Naturally staff at the accounts offices are proud of their achievements and strive continually to maintain these high standards. This in itself has been recognised through each office receiving recognition as an Investor in People.

If you are interested in attending the open day please contact Laura Campbell on 01274 539 636 as soon as possible as places are limited.

SUPPLEMENT TO MANUAL CA33 NOW AVAILABLE

The National Insurance Contributions Office has announced the availability of a supplement to the CA33 'Cars and Fuel Manual'.

The supplement contains revised guidance on calculating Class 1A National Insurance contributions for cars and fuel from 6 April 1999.

The CA33 (April 99) has been available from the Employers Orderline since February 1999 and anyone who has ordered a copy since this date will automatically be sent a copy of the new supplement. Future orders of the CA33 will also receive the supplement. Requests for the supplement only can also be made.

The Employers orderline (0845 7646 646) is open 8am to 8pm Monday to Friday and 10am to 1pm on Saturdays. Orders can also be made via the Inland Revenue Web site at http://www.inlandrevenue.gov.uk

REMISSION OF INTEREST ON DISPUTED NATIONAL INSURANCE CONTRIBUTIONS LIABILITY

The Inland Revenue published an Extra Statutory Concession on 18 May 1999 which allowed for remission of interest in certain circumstances on disputed National Insurance contributions liability 'until 1 August 1999 or until the issue of the decision under Section 8 of the Transfer Act, whichever is the later.'

That was the correct statement of the concession. Unfortunately in the accompanying Press Release the concession was wrongly described as applying until 14 days after the issue of the Section 8 decision.

The correct wording of the Press Release is now available on the Internet at: www.inlandrevenue.gov.uk

Inland Revenue Statements of Practice and Extra-Statutory Concessions issued between 1 August 1999 and 30 September 1999

Extra Statutory Concessions

There have been no Extra Statutory Concessions issued in this period

Statements of Practice

Number	Title	Date of Issue
03/99	Advance Pricing Agreements (APAs)	31/08/99

You can get copies of SPs and ESCs from the Inland Revenue Visitors Information Centre, Ground Floor, South West Wing, Bush House, Strand, London WC2B 4RD.or by ringing the Inland Revenue Enquiry line on 0171 438 6420.

CONTENT

The content of Tax Bulletin gives the views of our technical specialists on particular issues. The information published is reported because it may be of interest to tax practitioners. Publication will be six times a year, and include a cumulative index issued on an annual basis.

- You can expect that interpretations of the law contained in the Bulletin will normally be applied in relevant cases, but this is subject to a number of qualifications.
- Particular cases may turn on their own facts, or context, and because every possible situation cannot be covered, there may be circumstances in which the interpretation given here will not apply.
- There may also be circumstances in which the Board would find it necessary to argue for a different interpretation in appeal proceedings.
- The Bulletin does not replace formal Statements of Practice.
- The Board's view of the law may change in the future. Readers will be notified of any changes in future editions.

Nothing in this Bulletin affects a taxpayer's right of appeal on any point.

Letters on any article appearing in Tax Bulletin should be sent to the Editor, Jeremy Sherwood, Room 402, 22 Kingsway, London WC2B 6NR or by e-mail to cdpolicy.ir.kw@gtnet.gov.uk. We are sorry though that neither he nor our contributors will normally be able to enter into correspondence about Tax Bulletin or its contents.

SUBSCRIPTION

The subscription for 1999 is £22. If you would like to subscribe to Tax Bulletin please send your name and address together with your cheque to Inland Revenue, Finance Division, Barrington Road, Worthing, West Sussex BN12 4XH. Cheques should be crossed and made payable to "Inland Revenue".

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