Analysis

Private client tax in 2021: plus ça change?

Speed read

2021 has been another remarkably stable year for the private client industry, with very few changes to the tax regime and little of note in the Autumn Budget. Despite wide speculation that reforms to the capital gains tax and inheritance tax regimes, or even the introduction of a wealth tax, may be used to form part of the covid-19 strategy, nothing has materialised. As with previous years, there has been a continued focus on transparency. A newer area of focus has been the taxation of cryptoassets.

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We do not think we are alone in feeling that 2020 and 2021 have blurred into one. The impact of Brexit is again vying with covid for media airtime and government sleaze is back on the agenda – plus ça change? The economy has fared better than many had forecasted, and from a private client tax perspective, the Autumn Budget did not bring the changes to capital gains tax, the introduction of a wealth tax or the reforms to inheritance tax that many had expected, and which some argue could replenish the depleted Treasury coffers.

In this article we will be focusing on the continued quest for transparency, developments in relation to cryptoassets, HMRC's reviews of trusts and family investment companies as well the long-awaited responses to the proposed simplification of inheritance tax and capital gains tax courtesy of the Office of Tax Simplification (OTS). We will also make brief reference to the SDLT regime and the increased rates of national insurance and income tax on dividends. Finally, we shall polish off the crystal ball for what might happen next year.

Transparency

The TRS

Late last year we saw further changes to the Trust Register under the Fifth Anti Money Laundering Directive (AMLD5) brought into force by the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations, SI 2020/991, which amended the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations, SI 2017/692 ('the 2017 regulations'). However, practitioners were left in limbo, awaiting the much-anticipated opening by HMRC of its online registration portal, which finally took place in September 2021. While several changes introduced by AMLD5 will not come into full force until next year, many provisions took effect from 6 October 2020.

The categories of 'low risk' trusts which are excluded from the requirement to register are listed in Sch 3A into the 2017 regulations (as amended). Industry professionals continue to lobby HMRC and HMT to add bare trusts to the list. At the time of writing, we understand the list will be expanded to include all health care policies held in trust (including those that are not part of a wider life policy) together with trusts required in order to open a bank account for a child. The details of the majority of these registerable trusts will be accessible by those who can demonstrate a legitimate interest for so doing.

Furthermore, in a statement issued on 29 November 2021, HMRC confirmed that trusts that were 'in existence on or after 6 October 2020, and have since ceased, are still liable for registration on TRS'. However, HMRC also said it will take 'a proportionate approach' should any trust come to its attention after the deadline for registration of 1 September 2022.

Beneficial ownership of overseas entities

We are *still* waiting for the introduction of a beneficial ownership register for UK property interests held by overseas entities which comes with a duty to register the foreign entity at Companies House – and have been for a number of years. It remains on the government's 'to do' list, although it may creep up the list following this year's publication of the Pandora papers – information leaked to the International Consortium of Investigative Journalists (ICIJ) in Washington which then shared access with certain media partners.

DAC 6

Late last year, we received the news that only arrangements bearing one of the hallmarks under category D of DAC 6 were to be retained for UK reporting purposes. 30 January 2021 saw the first reporting deadline. Alongside other consultation papers published on 'tax administration and maintenance day' (30 November 2021) ('tax day'), the government published draft regulations ('The International Tax Enforcement (Disclosable Arrangements) Regulations 2022') which will implement the OECD mandatory disclosure rules intended to replace the DAC 6 implementing regulations.

A focus on cryptoassets

As the use of cryptoassets by investors continues to grow, so too does the debate around how they should be taxed. March 2021 saw the publication of HMRC's first *Cryptoassets Manual* setting out its view of the appropriate tax treatment of cryptoassets. This was followed later in the year by HMRC issuing 'nudge letters' to taxpayers that it has identified as holding cryptoassets, inviting the recipients to review their crypto transactions and report any gains which exceed their annual exempt amount (or claim losses) in their self-assessment tax returns.

Perhaps the most contentious issue is HMRC's view that the situs of cryptocurrency should be determined with reference to where the beneficial owner is resident. This contrasts with the view taken by the courts in two cases – *Fetch.ai Ltd v Persons Unknown* [2021] EWHC 2254 and *Ion Science v Persons Unknown* (unreported) (December 2020) – where it was held that the situs of a cryptoasset is the place where the owner is 'domiciled'. The Society of Trust and Estates Practitioners (STEP) has also published its own guidance note on the issue, focusing on the location of the private key or of the person who has control of the private key and the common law rules for determining residence, rather than the statutory residence test.

Family investment companies (FICs): 'business as usual'

The HMRC taskforce (set up in April 2019) to investigate FICs and their use by wealthy families was disbanded in August 2021. HMRC concluded that the use of FICs appears to be a planning strategy, often with the primary objective of generational wealth transfer and mitigation of IHT, and found no evidence that those using FICs were more inclined toward non-compliant behaviour. FICs are now looked at by HMRC as 'business as usual'.

Taxation of trusts

March 2021 saw the publication of HMRC's long awaited response to the consultation *The taxation of trusts: a review* (which ran between 7 November 2018 and 28 February 2019). HMRC concluded that the responses did not indicate a desire for a comprehensive reform of trusts at this stage, but the government will keep the issues raised under review.

The OTS reports on IHT and CGT

In March 2021, the government responded to the OTS' first report (*Inheritance tax review: overview of the tax and dealing with administration*, November 2018), accepting six of the seven recommendations contained therein, and announced that it would:

- change reporting regulations so that from 1 January 2022 over 90% of non-taxpaying estates each year will no longer have to complete inheritance tax forms for deaths when probate or confirmation is required; and
- make permanent the ability for those dealing with a trust or estate to provide an inheritance tax return without requiring physical signatures from all others involved, easing the administration burden in cases where an inheritance tax return is still required.

Following the first OTS report on capital gains tax in November 2020, a second report (*Simplifying practical, technical and administrative CGT issues*) was published in May 2021. This looked at awareness and administration, tangible moveable property, divorce and separation, business issues, investor issues and land and property issues. It expressly excluded partnerships, trusts, estates in administration, non-UK residence, non-UK domicile or complex international issues on the basis that each of these are areas where the issues involved go much wider than CGT and should be the subject of a separate review. The report made 14 recommendations.

In a brief statement (given by the new Financial Secretary to the Treasury, Lucy Frazer QC MP) published on last week's tax day, HMT provided further responses to the OTS' various reports on CGT and IHT, as follows.

In relation to IHT: 'Any potential changes to reliefs and the regime for lifetime gifts must be considered in this wider context. As you acknowledged, the report also raised wider questions about policy issues. As a result, after careful consideration of your recommendations, the Government has decided not to proceed with any changes at the moment, but will bear your very valuable work in mind if the Government considers reform of IHT in the future.'

In relation to CGT: 'I am pleased to announce the Government has accepted five recommendations from the second report on the technical and administrative issues with CGT, which we agree will offer some practical simplifications for taxpayers. I have also asked officials to consider the details of five more of the recommendations that you have set out and to keep these issues under review.'

Wealth Tax Commission

The Wealth Tax Commission was established in Spring 2020 to study whether a UK wealth tax is desirable and deliverable and published its report on 9 December 2020. To date, there has been no government response, although an answer to a recent parliamentary question (on 16 November 2021) suggested that this is not on the agenda.

SDLT

There was some good news for house purchasers as the SDLT 'holiday' (introduced on 8 July 2020) was extended until 30 June 2021 and continued in a more limited form until 1 October 2021.

There was bad news for non-resident buyers: the non-resident surcharge came into effect on 1 April 2021, adding an extra 2% to all the residential bands for buyers who are non-resident individuals or companies or other entities ultimately under overseas control.

The government has now announced a consultation to end abuse of multiple dwellings relief on annexes and the mixed-use rule.

Tax rates

The Chancellor of the Exchequer, Rishi Sunak, delivered his Autumn Budget to Parliament on 27 October. Despite the declaration that 'everyday spending must be paid for through taxation', the Autumn Budget did not include any immediate tax rate rises, although the chancellor did confirm certain rises that had already been announced.

- dividend rates will increase by 1.25% (the ordinary rate up to 8.75%, the upper rate to 33.75% and the additional rate/trust rate to 39.35%);
- employee and employer NICs will increase by 1.25% (which will be reversed from April 2023, with the introduction of the new social care levy); and
- other forms of income, such as those from pensions and property, are not affected.

The fact that most tax thresholds, allowances and exemptions have (yet again) been frozen does mean that there will be an increased tax take.

Looking ahead

Had we been writing this article prior to last week's 'tax day', we would have repeated the suggestion in last year's end of year review (*Tax Journal*, 9 December 2020) to 'watch this space' for changes to CGT and IHT following the OTS reports. As explained above, nothing very interesting is likely to happen. It also seems very unlikely that we will see a wealth tax.

But could taxes come down? In the Autumn Budget, the chancellor acknowledged that the tax burden is now at its highest level since the 1950s and declared that it was his goal to reduce taxes by the end of this parliament. It remains to be seen how he can square this with his intention to build 'an economy fit for a new age of optimism' as he announced the biggest increase in public spending for a decade. ■

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- Tax and cryptocurrencies: why we need more than a nudge (M Pearce, 18.11.21)
- Tax administration and maintenance day 2021 (1.12.21)