

National heritage in crisis: HMRC's revised guidance

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***P.C.B. 181** "The impossible often has a kind of integrity which the merely improbable lacks" (Douglas Adams)

It is trite to say that the Covid-19 pandemic has caused myriad unexpected consequences over a wide range of sectors. Primarily, of course, it is a healthcare crisis of international proportions. Beyond that lie long-ranging economic and social consequences that will resonate for generations.

One general area which pervades a number of areas of law is the extent to which the facts of the pandemic mean that established legal regimes cannot sensibly operate without change. The underlying principles and the rationale for legal rules may still be intact, but they were simply not designed for a world in which people's activities are restricted. Some rules may rely on people behaving in a way that is very difficult during a pandemic. Some rules may rely on people behaving in a way that is in fact impossible.

The conditional exemption tax incentive scheme

One example of this is the UK's conditional exemption tax incentive scheme.¹ This is a scheme that affords special capital taxation status to certain buildings, land, artwork and other items, including anything which the Secretary of State considers pre-eminent for its national, scientific, historic or artistic interest. The aim is to preserve and protect national heritage for the public benefit.

The rules are somewhat detailed but, in essence, assets that qualify under the scheme are exempt from inheritance tax and capital gains tax for so long as certain conditions are met.

Depending on the type of heritage property subject to the scheme, undertakings must be given which are appropriate to the type of property. Broadly speaking, the property's owner (typically) must undertake to keep the property in the UK; to ensure that it is adequately preserved; and to allow reasonable public access.² The policy rationale behind the scheme, which has evolved over the years, is clear: to incentivise owners of heritage assets to maintain them in the UK and to make them available to the public. What constitutes "reasonable access to the public" varies depending on the nature of the property.

Response to the pandemic

HMRC have recognised that pre-eminent land and buildings which would otherwise be open to the public have been forced to close to the public due to the coronavirus. It has issued guidance explicitly acknowledging the reality of the situation and allowing a temporary relaxation of the rules. ***P.C.B. 182**

This is a pragmatic approach. Owners of conditionally exempt assets should not be in a position where in strict theory they would be forced to choose between breaching their tax undertakings on the one hand or public health regulations on the other. And, of course, the reality is that there will have been no visiting members of the public.

Accordingly, in the most recent update of their guidance (available online) HMRC has expressly indicated that it may not be possible for owners of property in the Conditional Exemption Tax Incentive Scheme to meet all their undertakings due to the pandemic.³

In particular, users of the scheme should note the following. It is likely that there will be further updates (not least in relation to given dates) as the national situation continues to change.

- Owners of national heritage property may close it or delay its opening to 1 August 2021.
- From August 2021, the tax agreement is not broken if reasonable public access cannot be provided when following guidance on social distancing. HMRC will consider temporary adjustments to tax agreements on an individual basis: examples given are limiting visitor numbers or closing rooms. Much will turn on the nature of the property and the government guidance on distancing as it continues to evolve.
- It may be that properties are not open for the full number of days required under a given agreement. This will not of itself result in a breach of that agreement.
- If the object is on loan to a museum, gallery or other venue which closes, the resultant withdrawal of public access will not be treated as a breach of agreement.
- For objects that can only be seen by appointment, HMRC would not expect an owner to agree an appointment until the government's advice allows them to do so.
- Similarly, it may be a term of an undertaking that publicity or promotional material supporting public access must be produced. HMRC accept that they will consider there to be no breach of an agreement where this material cannot be produced.

This all constitutes a pragmatic response, which is to be welcomed. Indeed, the alternative is unimaginable—to force taxpayers into mass, inevitable non-compliance which would defeat the very policy and purpose of the scheme.

Comment

It is interesting to compare this with other areas of tax law where the pandemic has changed people's behaviours with other potential differing consequences. Take, for the example, the case of personal tax residence. An individual may be forced to be physically present in the UK because of restrictions relating to the coronavirus. HMRC has set out the circumstances in which certain such days can be regarded as "exceptional" for the purposes of the UK's statutory residence test.⁴ But in this case, the issue is not that the taxpayer is faced with a literally impossible alternative. Rather, the taxpayer risks the acquisition of a UK residence status which they did not intend or plan for. The relaxation of the rules is based on a more generic conception of fairness.

Of course, there is some subjectivity in the conditional exemption guidance as wider coronavirus guidance evolves. What it means for it to be impossible (rather than difficult) to comply with public health guidance may be open to interpretation in certain cases. But HMRC's guidance is sensibly and helpfully drafted and allows for the preservation of an important national heritage scheme in a time of crisis when owners of heritage assets are faced with a number of competing threats.

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Footnotes

- 1 Inheritance Tax Act (IHTA) 1984 ss.30 –35A; *Inheritance Tax Manual IHTM11260*; Taxation of Chargeable Gains Act (TCGA) 1992 s.258.
- 2 IHTA 1984 s.31(2).
- 3 "*Capital Taxation and Tax-exempt Heritage Assets*" (27 November 2013), gov.uk, <https://www.gov.uk/government/publications/capital-taxation-and-tax-exempt-heritage-assets> [Accessed 8 August 2021]. This article refers to the guidance in the form updated as at 14 June 2021.
- 4 HMRC's Residence Domicile and Remittance Basis Manual (RDRM) 11005: <https://www.gov.uk/hmrc-internal-manuals/residence-domicile-and-remittance-basis/rdrm11005> [accessed 6 September 2021].