Inland Revenue

tax BULLETIN

ISSUE 61

contents

Capital Gains Tax - Taper Relief - Anti Avoidance - Paragraphs 11 and 11A Sch A1 TCGA 1992 963

Capital Gains Tax - Capital sums derived from assets - reliefs and Extra Statutory Concession D33 967

Capital Gains Tax - taper relief - partnerships - disposals of partnership goodwill by partners - revised statements of practice D12 970

interpretations

Human Rights and Penalties 973

Value Added Tax - Flat Share Scheme 973

miscellaneous

Self Assessment: Extension of Deadline for PAYE Electronic Filers 975

Tax Law Rewrite - The Draft Income Tax (Earnings and Pensions) Bill 975

Section 55FA 2002: Tax relief for gifts of medical supplies and equipment 975

Revenue Prosecutions 977

Extra Statutory Concessions & Statements of Practice 978

Please find enclosed with your October issue a renewal form for next years subscription.

Tax Bulletin is also available on the Inland Revenue Website at
www.inlandrevenue.gov.uk/bulletins

Capital Gains Tax – Taper Relief – Anti-Avoidance - Paragraphs 11 and 11A Sch A1 TCGA 1992

This article covers:

- The implications of the repeal of paragraph 11
- The purpose and scope of paragraph 11A
- The application of paragraph 11A in some common situations

The implications of the repeal of Paragraph 11

Paragraph 11 Sch A1 does not apply to disposals of shares on or after 17 April 2002, even if there was a relevant change of activity involving a close company before that date. The paragraph only needs to be considered on a disposal of shares of a close company before that date.

editorial

I welcome you to my first edition of Tax Bulletin as editor. I acknowledge that there have been a couple of changes in this capacity in as many months and I apologise for this. The changes have has been as a result of staff movement and I shall remain the editor for the foreseeable future.

Although I am unable to enter into personal correspondence with readers about Tax Bulletin or its contents, I very much appreciate any comments you have with regards to what topics we cover, any articles we have featured and indeed any suggestions you may have on how we can improve this service.

All articles published in Tax Bulletin publicise our view of the law and indicate how the Inland Revenue will apply the law in a particular area. Our view is not always accepted and there is of course nothing to preclude an argument being taken on appeal to the Commissioners or Courts.

Tax Bulletin is covered by Crown Copyright. There is no objection to firms copying the Bulletin for their own use. Anyone wishing to republish the Bulletin or extracts more widely should write to Miss Glenda Bishop, further details can be found on the back page. All requests must be made in writing.

I look forward to being the Editor for Tax Bulletin and receiving any comments or suggestions from customers.

Shell Makwana

The Enactment of Paragraph 11A

S47 and Schedule 10(3) FA 2002 enacted paragraph 11A Sch A1 TCGA 1992 (*Periods of share ownership not to count if company is not active*) for disposals of shares in companies from 17 April 2002. For taper relief, "shares" includes securities and certain debentures[1]. The full text of paragraph 11A is at the end of this article.

The Purpose of Paragraph 11A

The Government had two purposes in mind when introducing paragraph 11A as part of the 2002 Finance Bill:

- That the paragraph should provide continued revenue protection against transactions arranged to secure excessive taper relief. For example, where an individual sets up a company in year 1; does nothing with it until year 8 when it is used to acquire an asset; and disposes of the company's shares in year 11. Without paragraph 11A, the individual would obtain ten years of taper relief on the gain from the shares, even though that gain would be wholly attributable to the increased value of the asset acquired by the company only three years previously.

- That the paragraph should ensure that people are not inadvertently disadvantaged if they use a long-held dormant company to conduct a trade. Without paragraph 11A, the company's shares would be classed as non-business assets during the period of dormancy, leading to less taper relief than expected on a future disposal of those shares, even though the only activity ever actually conducted by the company prior to the disposal was trading.

How Paragraph 11A works

The paragraph applies where, on or after 17 April 2002, there has been a disposal of shares in a company which was both close and 'inactive' at any time from 6 April 1998 to the date of disposal. If so, then the period during which the company was both close and inactive will not count for the purposes of taper relief. So the paragraph 11A test should be applied before considering whether an asset is a business asset or not. The examples below show how paragraph 11A works.

Mary acquires shares in a company on 1 July 1998. These are disposed of on 1 September 2002. The company was both close and inactive from 1 July 1998 to 31 December 1998 (inclusive). On 1 January 1999 the company started to trade (i.e. it became 'active'). It continued trading until 1 September 2002 and remained close in that period.

[1] Under paragraph 8(3)(d) of Schedule 10 to FA2002, certain debentures are now treated as securities for the purposes of taper relief for disposals on or after 6 April 2001 and for all holding periods. However, paragraph 11A (like certain other revenue protection provisions) does not apply to any such debentures in relation to any time before 17 April 2002.

Mary's qualifying holding period for taper relief purposes will be the period from 1 January 1999 (rather than 1 July 1998) to 1 September 2002. There are three (rather than four) whole years in this period. This will also be Mary's relevant period of ownership. If the shares qualified as business assets throughout the relevant period of ownership full taper relief at the business rate will be due in computing the chargeable gain.

John acquires shares in an active close company on 1 May 1999. The company is inactive from 1 August 2002 but becomes active again on 1 August 2004. John disposes of his shares on 1 December 2005. The company remained close throughout. John's qualifying holding period will be the combined period from 1 May 1999 to 31 July 2002 and 1 August 2004 to 1 December 2005, or 4 years and 7 months. This is also the relevant period of ownership of the shares. There are 4 whole years in the qualifying holding period. John will need to work out if the company was his qualifying company during the two parts of the relevant period of ownership in order to see if business assets taper is due. (The period 1 August 2002 to 31 July 2004 is a period that 'does not count' for taper purposes. It is not therefore taken into account in working out either the qualifying holding period or the relevant period of ownership.)

Relevant Period of Ownership

Where paragraph 11A applies, the start point of the relevant period of ownership can be more than ten years before the date of disposal. But the relevant period of ownership cannot be more than ten years, nor can the start date precede 6 April 1998 or the date of acquisition of the asset (paragraph 2 Sch A1 TCGA 1992). This can be illustrated by a simple example.

Amarjeet acquired shares in an active close company on 15 February 1999. These are disposed of on 15 May 2010. The company was close throughout but inactive between 15 June 2001 and 15 March 2002 and this period will not count in working out the relevant period of ownership. The relevant period of ownership will therefore be the combined periods from 16 March 2002 to 15 May 2010 and 15 August 1999 (not 15 February 1999) to 14 June 2001, being 10 years ending with 15 May 2010.

The way in which periods that do not count affect the qualifying holding period and relevant period of ownership for paragraph 11A purposes is therefore the same as for paragraph 10 Sch A1 TCGA 1992 (see CG17928).

Requirement to be Close

Whether or not a company is close at any time for the purposes of paragraph 11A is to be determined in accordance with the normal rules found in sections 414 and 415 of the Income and Corporation Taxes Act 1988.

Note that the assessment of whether a company is both close and inactive needs to be made for all times that shares were owned and may involve more than one company if there has been a share reorganisation (see below). That is different from paragraph 11, where the assessment whether a company was close needed only to be made in respect of the position on a disposal and only in relation to the company in which the shares were held at the time of the disposal.

A period when a company is inactive but not close will still count for taper relief purposes. So, in John's case above, if the company had been a non-close company at all times then paragraph 11A would not apply and John's qualifying holding period and relevant period of ownership would be 1 May 1999 to 1 December 2005.

Company Reconstructions and Reorganisations

A person eligible for taper relief may exchange shares or debentures for other shares or debentures when a company is reorganised, reconstructed or amalgamated. Where the relevant conditions are met, s127 TCGA 1992 applies and the reorganisation is treated as not involving any disposal of the original shares or any acquisition of a new holding. The original shares and the new holding are treated as the same asset acquired as the original shares were acquired. Where, as a result, there is but one asset - represented at certain points in time during the holding period by the original shares and at other points in time by the new holding of shares - the tests in paragraph 11A are applied, at any particular time during the holding period and the relevant period of ownership, by an examination of the status of the company in which the shares were then held. For example:

Ali holds shares in a close trading company A, which he acquired on 18 November 1999. On 7 July 2002 the trade of that company is transferred to a newly formed close company B. The shareholders of A receive shares in B in consideration for the transfer of the trade. Company A is then liquidated. This whole transaction is treated as a reorganisation of shares for capital gains tax purposes. There is no disposal of the A shares as a result of the reconstruction, and the shares in company B are treated as acquired when the A shares were acquired. Ali disposes of his B shares on 1 October 2007. B was a trading company throughout. The assessment for paragraph 11A is made in respect of the shares actually held at the time. So for the period 18 November 1999 to 6 July 2002, Ali looks at company A; for the period 7 July 2002 to 1 October 2007, Ali looks at company B. Whilst Ali held shares in company A it was close but active throughout. The same applies to the times he held shares in Company B. Therefore paragraph 11A will not apply. Ali's qualifying holding period and relevant period of ownership will be from 18 November 1999 to 1 October 2007.

Bonus Year

The bonus year is available for assets that had been acquired before 17 March 1998 and held on 6 April 1998. Paragraph 11A has no effect on the availability of the bonus year.

Meaning of active

Paragraph 11A(2) details when a company is "active" for the purposes of the paragraph but this is subject to paragraph 11A(4).

A company is regarded as active at any time when it is carrying on a business of any description. Business has a wider meaning than trade and may include property investment and rental. Any time when a company is a trading company, or the holding company of a trading group, will be a time when that company is active, for paragraph 11A purposes.

A company will also be regarded as active when it is preparing to carry on a business of any description. Whether or not it is preparing to carry on a business is a question of fact. At one extreme the directors of a company may simply get together once a year to agree that the company will do nothing in the coming year unless a business opportunity arises. That company would not be 'active' for paragraph 11A purposes. By comparison, the directors of another company may have identified a specific business opportunity and be in negotiation to finance and start up or acquire a business. This would be an active company for paragraph 11A purposes.

A company will also be active when it or another person is winding up the affairs of a business of any description that it has ceased to carry on. This will include the formal winding up of the company by a liquidator. But a company that is in liquidation and where there are no winding up activities is unlikely to be active. It will also include cases where the directors, or some other person, are dealing with the post-cessation business affairs of the company but the company remains in being. This will usually involve paying off creditors, closing bank accounts, selling off assets etc. And it will include cases where the company is intended to remain in being in order to start another business later, but there is to be a gap between winding up the first business and starting the next: the time spent winding up the affairs of the first business counts as active. Alternatively, a company previously engaged in one trade or business, may do nothing for a time and subsequently start a new trade or business. Only the middle period, during which the company is neither settling the affairs of the earlier business nor preparing to start the later business, is "inactive".

Paragraph 11A(4) describes certain activities which will not count as activities for the purposes of paragraph 11A(2) where all or any of these are the company's only activities. These activities are explained in the next section of this article.

Further situations when a company is treated as active

Paragraph 11A treats a company as active in certain specific situations where groups and/or joint ventures are involved. These are:

- Where the company is the holding company of a group of companies that contains at least one active company; or,
- Where the company has a qualifying shareholding in a joint venture company or is the holding company of a group of companies any member of which has a qualifying shareholding in a joint venture company.

By definition a joint venture company will be active, as it has to be a trading company or the holding company of a trading group (paragraph 23(2) Schedule A1).

Certain activities are not enough to make a company active

A company will not be regarded as active where all it does is one or more of the following:

- Holding money (in any currency) in cash or on deposit;
- Holding other assets whose total value is insignificant;
- Holding shares in or debentures of a company that is not active;
- Making loans to an associated company or to a participator or an associate of a participator; and
- Carrying out of certain statutory administrative functions.

For example, a company may issue 100 £1 ordinary shares (fully paid). If that is all the company has done to date it will not be active. Or, it may simply be a repository for funds which are held in cash or on deposit without indulging in any other activity.

Only where there is a structured commercial activity beyond the holding of money on deposit which the company is carrying on, or is preparing to carry on, would it count as active.

In another case a company may have invested the £100 it received on the issue of the ordinary shares in an option to buy an asset. The value of the option would normally be insignificant at that time.

Finally, the company may simply make an annual return of accounts to Companies House.

In all these cases the company will be inactive.

Meaning of insignificant

The word 'insignificant' must be given its normal dictionary meaning of trifling or completely unimportant. Thus in most cases it is unlikely to cover any assets with a value in excess of £1000. Ultimately, whether or not the holding of assets is insignificant is a question of fact.

Meaning of business

The meaning of business was discussed in Tax Bulletin 53 in the context of paragraph 11 Sch A1 TCGA 1992 and its use in TCGA 1992 generally. There we explained that the concept of a business is central to parts of the capital gains code. For example, S162 TCGA 1992 concerns the transfer of a business to a company as a going concern and S163 TCGA 1992 provides for retirement relief on the disposal of a business or business assets. In the case of S163, for example, relief is restricted to assets used for a trade, profession, etc and this does not include assets used for a lettings business within Schedule A. However, a lettings business will be a business for the purposes of paragraph 11A.

The meaning of business is not defined for the purposes of paragraph 11A. Generally it should not be difficult to identify whether or not a business is being carried on. Inevitably there will be a few cases on the margin where the facts will have to be considered carefully. The first point to note is that 'business' and 'trade' are not synonymous. Whilst all trades are businesses, there are many businesses that are not trades. Property letting, as opposed to the provision of services to tenants, may be a business though not a trade. The holding of investments can also amount to a business. Indeed, there is judicial support for the view that this does not have to be actively carried on to be a business of making investments (see, for example, CIR - v - The Korean Syndicate Ltd 12 TC 181). But, paragraph 11A will apply where the "business" is not regarded as active because of the restrictions in paragraph 11A(4).

On the other hand, there are several cases where it has been held that a trading company which has ended its main activities but has retained its investment portfolio is not carrying on a business of holding investments. The most recent case is Jowett v O'Neill and Brennan Construction Ltd 70 TC 566.

In that case, Mr Justice Park acknowledged that whilst the normal conclusion, when a company lays out its assets and earns an income return, is that it is carrying on a business there will, as a matter of law, be exceptional cases where

the facts indicate that no business is being carried on by the company.

As Park J. pointed out in the O'Neill case, it is the exception rather than the rule that means a company is not carrying on a business when it puts its money on deposit. But - because of the restrictions in paragraph 11A(4) - there needs to be business activities beyond just holding money on deposit for a company to count as active.

The new legislation in paragraph 11A makes clear that it is not necessary for the business to be conducted on a commercial basis or with a view to the realisation of a profit. References to carrying on a business include holding assets and managing them (para 11A(3)(b)). Simply holding assets will not necessarily amount to carrying on a business.

The legislation

"Periods of share ownership not to count if company is not active

11A (1) Where there is a disposal of an asset consisting of shares in a company, any period after 5th April 1998 during which the asset consisted of shares in a company that-
- (a) was a close company, and
- (b) was not active,

shall not count for the purposes of taper relief.

(2) Subject to the following provisions of this paragraph, a company is regarded as active at any time when-
- (a) it is carrying on a business of any description,
- (b) it is preparing to carry on a business of any description, or
- (c) it or another person is winding up the affairs of a business of any description that it has ceased to carry on.

(3) In sub-paragraph (2) above-
- (a) references to a business include a business that is not conducted on a commercial basis or with a view to the realisation of a profit, and
- (b) references to carrying on a business include holding assets and managing them.

(4) For the purposes of this paragraph a company is not regarded as active by reason only of its doing all or any of the following-
- (a) holding money (in any currency) in cash or on deposit;
- (b) holding other assets whose total value is insignificant;
- (c) holding shares in or debentures of a company that is not active;
- (d) making loans to an associated company or to a participator or an associate of a participator;
- (e) carrying out administrative functions in order to comply with requirements of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 (SI1986/1032 (NI6))or other regulatory requirements.

(5) Notwithstanding anything in sub-paragraphs (2) to (4) above a company shall be treated as active for the purposes of this paragraph if-
- (a) it is the holding company of a group of companies that contains at least one active company, or
- (b) it has a qualifying shareholding in a joint venture company or is the holding company of a group of companies any member of which has a qualifying shareholding in a joint venture company.

(6) In this paragraph "associated company" has the meaning given by section 416 of the Taxes Act and "participator" and "associate" have the meaning given by section 417 of that Act.

(7) Any reference in this paragraph to shares in or debentures of a company includes an interest in, or option in respect of, shares in or debentures of a company".

Capital Gains Tax – Capital sums derived from assets - reliefs and Extra Statutory Concession D33

Introduction

This article sets out how reliefs are calculated when a capital sum is derived from an asset and when ESC D33 (the Zim concession) is applied. In particular this note deals with some common situations where taper relief is due. The Revenue's Capital Gains Manual provides guidance on general Capital Gains Tax (CGT) principles where capital sums are derived from assets at CG12940 onwards and for ESC D33 at CG13010 onwards.

Overview

For CGT purposes, a reference to a "disposal" of an asset includes not only a reference to the actual disposal (or an actual part-disposal) of the asset: it also includes reference to certain occasions where a "capital sum", in money or "money's worth", is "derived from assets" (s22 TCGA 1992). Accordingly, a person who receives a capital sum derived from an asset is treated for CGT purposes as though he or she had made a disposal of that asset. The date of the deemed disposal is the date the capital sum is received (s22(2) TCGA 1992).

There is a deemed disposal of an asset where a capital sum is received as compensation

- for any kind of damage or injury to the asset, or
- for the loss, destruction or dissipation of the asset, or

- for any depreciation or risk of depreciation of the asset.

Identifying the asset from which a capital sum is derived can sometimes be a problem in the application of s22. The case of CIR v Montgomery (49TC679) explores the meaning of the phrase "derived from assets" and is also a useful illustration of the problems associated with identifying the correct asset for s22 purposes. Other cases are discussed at CG12985 onwards. The question will often be whether the sum derives from the asset itself or from a right to take action for compensation or damages. This point was considered in the case of *Zim Properties Ltd v Proctor* (58TC371). In that case the asset disposed of was held to be the "right to take action" rather than the land which, owing to the alleged negligence of the company's solicitors, was not sold.

Where a capital sum is derived from an asset, and s22 applies, we look at the history of the use of the asset from the time it was acquired to the time the capital sum is received to determine what reliefs are due and how they should be calculated. We confirm that in these circumstances "reliefs" includes taper relief.

Taper relief and s22 TCGA 1992

Taper relief reduces a chargeable gain after losses according to how long an asset has been held before its disposal (*the qualifying holding period*). The amount of the reduction depends on the number of whole years in that period and whether or not the asset was a *business asset* during the *relevant period of ownership*. Paragraph 2 Sch A1 TCGA 1992 explains how to determine the *qualifying holding period and the relevant period of ownership*. Neither period can begin before 6 April 1998 or, if later, the time the asset is acquired. In the case of the *relevant period of ownership* this can not be longer than 10 years ending in the disposal of the asset. The rules to determine if shares qualify as business assets can be found in paragraph 4 Sch A1 TCGA 1992. Paragraph 5 Sch A1 TCGA 1992 explains when other assets qualify as business assets.

Example 1: Capital sum derived from asset

Joan is a sole trader and on 1 June 1998 she purchased land that she occupied and used wholly for the purposes of her trade from that date. On 1 October 1999 part of the land was damaged by a chemical spillage from a factory adjoining her land. Despite the spillage, Joan was able to continue using the land in her trade. The land was disposed of on 1 September 2001. Joan therefore ceased to occupy and use the land for the purposes of her trade from that date. It was then occupied by a another sole trader and used for the purposes of his trade.

On 1 May 2002 Joan received compensation from the factory owners for the damage to her land: this is chargeable to capital gains tax in accordance with s22 TCGA 1992 as a capital sum derived from the land. Where a sum is recovered as compensation for physical damage to an asset, identification is not a problem because it is inevitably the asset, rather than any right of action, from which the sum derives. From 1 September 2001 the land did not qualify as a business asset in relation to Joan.

For the purposes of calculating taper relief on the compensation payment, Joan's qualifying holding period and relevant period of ownership will be the period from 1 June 1998 to 1 May 2002 (inclusive). In relation to Joan, the asset will be a business asset between 1 June 1998 and 1 September 2001 (inclusive) but not thereafter.

Example 2: Capital sum derived from right of action

If, however, Joan's capital receipt did not derive from the land but from a right of action, for example because of her solicitor's negligence, the statutory position would be different. All applicable reliefs would be calculated by reference to the asset being the right of action. It is difficult to see how the right of action could be an asset that can be used for the purposes of a trade and it is therefore unlikely that the right would qualify as a business asset at any time. The result is that only non-business asset taper relief would be available on the chargeable gain.

In such a case it would be to Joan's advantage to apply ESC D33. We show how this would work in her case later in this article.

ESC D33

This concession provides that damages or compensation which derive from a right of action in respect of an underlying asset are treated for the purposes of tax on chargeable gains as though they derive from that underlying asset. So applying ESC D33 means that the calculation of chargeable gains is made in exactly the same way as if s22 applied. If any relief or exemption would be available on a disposal of the underlying asset, the concession allows that relief or exemption to be available on the disposal of the right of action. The usual conditions for the availability of the relief in question, such as those relating to use, employment or voting rights, have to be met at the relevant times.

For taper relief purposes, for any disposal of a right of action to which the concession applies:

- the qualifying holding period includes not only the period after 5 April 1998 when the underlying asset was held but also the period after that date when the right of action was held until the time at which the capital sum in question is received, and
- the relevant period of ownership is the period after 5 April 1998 during which the underlying asset was held

and also the period after that date when the right of action was held until the time at which the capital sum in question is received or, if shorter, the period of 10 years ending when the capital sum is received.

Once the chargeable gain on the disposal of the right has been calculated it will be necessary to determine whether that gain arises on the disposal of a business asset or a non-business asset in order to work out the amount of taper relief due. The taper rules will be applied to determine if an asset is a business asset for any part of the relevant period of ownership when the underlying asset is held. They will also apply for any period when the right of action, but not the underlying asset, is held as if the underlying asset were still held. However, this does not mean that the conditions relating to use in a trade, or voting rights and so forth will be deemed to be satisfied when the underlying asset is no longer held. The normal rules for assets to qualify as business assets will apply for any period when the right of action is held but the underlying asset is no longer held.

We now consider how ESC D33 would apply in the circumstances described in Example 2. Its effect is that, instead of non-business asset taper relief applying to the total chargeable gain, the non-business rate of taper applies only to the proportion of the gain which corresponds to the period from 2 September 2001 to 1 May 2002 (inclusive). The business asset rate of taper will be applied to the proportion corresponding to the period from 1 June 1998 to 1 September 2001 (inclusive).

It may help if we provide further examples of the application of taper relief in some typical scenarios where ESC D33 is applied.

Example 3: No disposal of underlying asset - asset other than shares

Jack owns the freehold of premises which he uses wholly for the purposes of his trade from 2 January 1997. On 1 July 2000 he instructed an estate agent to sell the premises. He continued to trade from the premises. Owing to the agent's negligence the sale of the building fell through on 31 January 2001. The estate agent paid Jack compensation on 1 September 2001.

Jack applies ESC D33 in computing a gain on the disposal of the right of action, which is chargeable to capital gains tax for the tax year 2001/02. Because the compensation is treated as being derived from the underlying asset, part of the acquisition cost of the premises, using the normal part disposal rules, (s 42 TCGA 1992), is allowed in computing the gain.

For taper relief purposes, the qualifying holding period is from 6 April 1998 to 1 September 2001 (inclusive). There are three complete years in that period. The part disposal is of an asset that has been wholly a business asset throughout the relevant period of ownership from 6 April 1998 to 1 September 2001 (inclusive) by reference to the use of the underlying asset - the land including the premises.

Business assets taper relief for three whole years will therefore be due on any chargeable gain arising on the disposal.

Example 4: Disposal of underlying asset - asset other than shares

John owned the freehold of premises which he used wholly for the purposes of his trade from 20 June 1996. On 1 May 2000 he instructed his solicitor to sell the premises. He continued to trade from the premises until they were disposed of on 1 November 2000. John made a capital loss on the disposal.

It later transpired that owing to a surveyor's negligence the sale of the building was at undervalue. The surveyor paid compensation to John on 1 December 2001. John applies ESC D33 in computing the gain arising on the disposal of the right of action chargeable to capital gains tax for the tax year 2001/02.

For taper relief purposes the qualifying holding period is from 6 April 1998 to 1 December 2001 (inclusive). There are three complete years in that period. The relevant period of ownership is also the period from 6 April 1998 to 1 December 2001 (inclusive).

The gain arises on an asset that was a business asset in relation to John for taper relief purposes from 6 April 1998 to 1 November 2000. From 2 November 2000 the land was not used in a trade carried on by John, by a partnership of which he was a member, or by a company which is a "qualifying company" (Schedule A1, paragraph 6) in relation to him. It was, therefore, not a business asset in relation to him from 2 November 2000 until 1 December 2001 (inclusive). The part of the gain relating to the time when the asset was a business asset will qualify for business assets taper relief applying to an asset held for three whole years. The other part will be a gain on a non-business asset and will qualify for four whole years of non-business asset taper relief, as the bonus year is available.

Example 5: Disposal of underlying asset - shares

Jennifer acquired 1000 shares in an unlisted trading company on 1 July 1998. On her accountant's advice, which proved to be negligent, she sold 400 of the shares at a significant undervalue on 1 May 2000. The 400 shares qualified as business assets throughout the period they were held. On 10 May 2000 she instructed her solicitor to take action against her accountant and on 1 December 2001

she received a capital sum to compensate her for the sale of the 400 shares.

Applying ESC D33, for taper relief purposes the qualifying holding period in computing any chargeable gain after taper relief on the capital sum is the period from 1 July 1998 to 1 December 2001 (inclusive). There are three complete years in that period. The relevant period of ownership is also the period from 1 July 1998 to 1 December 2001 (inclusive).

By applying the concession the capital sum is treated as deriving from the shares. In Jennifer's case the gain arises on shares that were business assets for taper relief purposes throughout the period from 1 July 1998 to 1 December 2001 (inclusive) since the shares were held in a company that was a qualifying company in relation to her throughout that period.

The reason the company continued to be a qualifying company in relation to Jennifer after she sold the shares is that for trading companies the definition of a qualifying company in paragraph 6(1) of Schedule A1 TCGA 1992 from 6 April 2000 does not require the individual concerned to be a shareholder or an employee of the company if it is unlisted.

Reliefs other than taper relief

For completeness, here are 2 examples where the reliefs in question are other than taper relief.

Example 6: Disposal of underlying asset other than shares - roll-over relief

Jake owned the freehold of premises that he occupied and used wholly for the purposes of his trade from 1 August 1992. On 1 October 1999 he instructed an estate agent to sell the premises. The disposal occurred on 1 July 2000 when Jake moved his trade elsewhere.

Jake then realised that the estate agent had undervalued his property. Compensation for negligence was paid on 1 February 2002. Jake applies ESC D33 in computing the gain arising on the disposal of the right of action chargeable to CGT for the tax year 2001/2002.

For the purpose of calculating what part of the compensation qualifies for roll-over relief, the period of ownership of the premises is deemed to be 1 August 1992 to 1 February 2002 (inclusive). The gain on the compensation must be apportioned between the period from 1 August 1992 to 1 July 2000 (the last day when the premises were occupied and used for the purposes of the business) and 2 July 2000 to 1 February 2002. The amount of the gain for the period 1 August 1992 to 1 July 2000 (inclusive) is available for roll-over relief if re-invested in an asset acquired within three years after 1 February 2002. No roll-over relief is available against the remainder of the gain as the premises were not occupied and used for the purposes of Jake's trade from 2 July 2000.

Detailed guidance on "roll-over" relief can be found at CG60250 onwards.

Example 7: Disposal of underlying asset other than shares - private residence relief

Jasmine owned a house that was her only private residence from purchase on 1 December 1989. On 1 March 1997 she instructed her solicitor to arrange the disposal of the house. The disposal was due to take place on 1 October 1997 but the sale fell through owing to delays by the solicitor. Another solicitor was instructed and the disposal occurred on 1 March 1998 but at a lower sale price. Jasmine moved out on that day.

Jasmine sued the first solicitor and received compensation on 1 February 2002. Since there is no base cost associated with the disposal of the right of action, the whole of the gain is chargeable to CGT for the tax year 2001/2002. However, Jasmine applies ESC D33 in calculating the reliefs to which she is entitled to reduce the gain.

For the purpose of calculating what part of the compensation qualifies for private residence relief, the period of ownership of the house is deemed to be 1 December 1989 to 1 February 2002 (inclusive). It was Jasmine's only residence from 1 December 1989 to 1 March 1998 (inclusive). In addition, the three years 2 February 1999 to 1 February 2002 qualify for relief in accordance with s223(2) TCGA 1992. The proportion of the gain relating to these periods is fully covered by private residence relief. Private residence relief is not available for the remainder of the gain relating to the period 2 March 1998 to 1 February 1999 (inclusive) but non-business assets taper relief will be due. The qualifying holding period will be the period from 6 April 1998 to 1 February 2002 and there are 3 whole years in that period. The bonus year will also be due as the residence was owned by Jasmine before 17 March 1998.

Detailed guidance on "private residence" relief can be found at CG64200.

Capital Gains Tax – taper relief - partnerships - disposals of partnership goodwill by partners – revised statement of practice D12

This article sets out how partners within the charge to capital gains tax should compute the amount of taper relief due on a chargeable gain arising on a disposal of partnership goodwill.

Background: Existing Provisions and Guidance

Guidance on partnerships and Capital Gains Tax (CGT) can be found in the Revenue's Capital Gains Manual at CG27000 onwards.

Guidance on goodwill can be found at CG68000 onwards generally and at CG27700 for partnerships. Taper relief guidance is at CG17895 onwards. CG27702 confirms the Revenue's view that the free goodwill (i.e. self-generated goodwill) of a partnership is a 'fungible asset'. Guidance on goodwill as a 'fungible asset' can be found at CG68055 onwards. A 'fungible asset' is an asset which grows or diminishes as parts are acquired or disposed of but the individual parts cannot be identified separately.

The identification of securities rules in Sections 104 TCGA 1992 onwards must be applied in computing chargeable gains arising on the disposal of 'fungible assets'. These rules were changed in relation to CGT (but not corporation tax) for assets acquired on or after 6 April 1998 (Section 104(2)(aa)). CG50564 onwards advises on the identification rules which apply to acquisitions of 'fungible assets' by individuals, trustees, or personal representatives on or after 6 April 1998 (Section 106A). These rules also apply to acquisitions of fractional shares in fungible partnership assets by partners who are not within the charge to corporation tax.

In addition to the explanation of the statutory rules for partnerships within s59 (Partnerships) TCGA 1992 at CG27001 onwards, there are a number of Statements of Practice (SP) which relate to partnerships and capital gains tax. Partners will normally follow SP D12 in addition to the statutory rules in computing their chargeable gains.

Applying these rules in practice means that when a partnership asset is purchased the acquisition is treated for CGT tax purposes as an acquisition by each partner of a share in that asset. The partnership itself is not regarded for such purposes as acquiring anything. A sale of a partnership asset is treated as a disposal by each partner of their share in that asset. Where a partner's share in a partnership asset decreases owing to a change in the partnership sharing ratio, there is a CGT disposal equal to the decrease. Normally, the disposal is treated as giving rise to neither a gain nor a loss for the partner. Partners usually acquire a share in partnership assets when they join or when another partner leaves the partnership or where there is a change in the profit sharing arrangements. Similarly, a partner will dispose of a share in the assets of a partnership when he or she leaves or when another partner joins the partnership. S59(a) TCGA 1992 confirms that for CGT purposes, the special status of partnerships under Scottish law is ignored. Therefore, SP D12 applies to Scottish partnerships.

New Treatment for Taper Relief - Principles

SP D12 has now been revised to help simplify computations of the amount of taper relief due where a partner disposes of a share in free goodwill.

The revision explains that in certain cases partnership goodwill is not regarded as a 'fungible asset'. This approach applies to acquisitions, disposals and part disposals of goodwill where:

- the value of goodwill generated by a partnership is not recognised in its balance sheet and
- as a matter of practice no value is placed on that goodwill in dealings between the partners.

In such cases, the treatment of the goodwill for taper relief purposes will be as follows. Partners will start to 'clock-up' taper relief from the time they first acquired an interest in the partnership's goodwill and will continue to do so until they cease to have an interest. The clock will not be re-set in any way when there are changes in the partnership ratio.

The rules described in the paragraph above also apply to goodwill acquired for consideration by a partnership but which is either not recognised in the partnership balance sheet or is shown only at cost or a written down value. Thereafter, such purchased goodwill will be treated as a separate asset and subsequent acquisitions and disposals may be within the new practice described above.

If, however, a partnership does take account of goodwill in transactions between the partners - for example, where incoming partners pay for partnership goodwill, or retiring partners are bought out of their goodwill - then the revised practice may not be applied in computing the gain after taper relief. In such cases chargeable gains are worked out in accordance with TCGA 1992.

The revised practice will apply to all partners within the charge to CGT. It also applies only to goodwill, and not to other 'fungible assets'.

New Text of Statement of Practice

The relevant text is paragraph 12 of SP D12 and is as follows:

> **Partnership goodwill and taper relief**
>
> This paragraph applies where the value of goodwill which a partnership generates in the conduct of its business is not recognised in its balance sheet and where, as a matter of consistent practice, no value is placed on that goodwill in dealings between the partners. In such circumstances, the partnership goodwill will not be regarded as a 'fungible asset' (and, therefore, will not be within the definition of 'securities' in section 104(3) TCGA 1992) for the purpose of capital gains tax taper relief under paragraph 2 Schedule A1 TCGA 1992. Accordingly, on a disposal for actual consideration of any particular partner's interest in the goodwill of such a partnership, that interest will be treated as the same asset (or, in the case of a part disposal, a part of the same asset) as was

originally acquired by that partner when first becoming entitled to a share in the goodwill of that partnership.

The treatment described in the preceding paragraph will also be applied to goodwill acquired for consideration by a partnership but which is not, at any time, recognised in the partnership balance sheet at a value exceeding its cost of acquisition nor otherwise taken into account in dealings between partners. However, such purchased goodwill will continue to be treated for the purpose of computing capital gains tax taper relief as assets separate from the partnership's self-generated goodwill. On a disposal or part disposal for actual consideration of an interest in such purchased goodwill by any particular partner, that interest shall be treated for taper relief purposes as acquired either on the date of purchase by the partnership or on the date on which the disposing partner first became entitled to a share in that goodwill, whichever is the later.

Example

The following example illustrates how the practice will apply in many common partnership situations, including the merger of two partnerships. The example also shows the different approaches for self-generated and purchased goodwill.

Event	Firm A	***Firm X***	Merged Firm AX
Firm formed and goodwill first created	7/1996		
A and B become partners	7/1996		
Firm formed and goodwill first created X becomes a partner		7/1999 7/1999	
B ceases to be a partner	1/2000		
Goodwill purchased		6/2000	
Y becomes a partner		8/2000	
C becomes a partner	11/2001		
Firms Merge			5/2002[1]
Disposal of Business			10/2002

Taper periods for goodwill

Self-generated	Period
A	4/1998 to 10/2002
B	4/1998 to 1/2000
C	11/2001 to 10/2002
X	7/1999 to 10/2002
Y	8/2000 to 10/2002

[1] The merged firm of AX is not a new firm separate and distinct from the merging practices but a continuation of both firms A and X.

Purchased	Period
A and X	6/2000 to 10/2002
C	11/2001 to 10/2002
Y	8/2000 to 10/2002

In terms of the self-generated goodwill,

- A and B's qualifying holding periods for taper relief both begin on 6 April 1998. Even though both were partners in Firm A before then, and there was then goodwill in existence, taper relief is not due for periods before 6 April 1998. B's period ends on leaving the partnership. Even though A acquired B's goodwill when B left, and disposed of some when C joined, those comings and goings do not affect A's taper relief.

- X is due taper relief from July 1999, having been a partner in the firm from its formation when goodwill first came into existence.

- C and Y's taper periods begin when they first became members of their respective firms.

The merger of the firms does not alter the taper periods for the partners then with the firms. In all cases the taper period ends in October 2002, when there is a disposal of the business, including the goodwill.

The taper periods for goodwill purchased after 5 April 1998 will begin when the goodwill is purchased or when a partner first becomes a partner, whichever is later. A and X's taper period begins, therefore, with the acquisition of the goodwill whereas for C and Y it is when they both become partners. Note that in the case of A and C their taper period for the goodwill purchased by firm X begins before the date of the merger. This treatment is consistent with the treatment of the self-generated goodwill of the merged firm. Again, the taper period for A and C ends with the disposal of the business including the purchased goodwill.

Separation of Self-Generated and Purchased Goodwill: Practical Issues

Because self-generated and purchased goodwill are treated separately for working out chargeable gains before taper relief the gains on the disposal of each may need to be determined separately. That may require a split of the total disposal proceeds on a just and reasonable basis.

Where no partner has a different qualifying holding period for the self-generated and the purchased goodwill it is not necessary to split the proceeds and calculate separate gains just for the purposes of taper relief.

In the case of goodwill used wholly for the purposes of a trade, following FA2002 which shortened full business assets taper to two years, for disposals on or after 6 April 2002 it will only be necessary to split total proceeds if the purchase of goodwill took place less than two years before the disposal.

Timing of Implementation

The above changes take effect from the time of publication of the revised statement of practice. As publication was before 31 January 2003 partners may amend their 2000/01 or later returns on the lines of this practice if they wish.

interpretation

Human Rights and Penalties

Article 6 of the European Convention on Human Rights (ECHR) entitles everyone to a fair trial. Where the person is charged with a criminal offence, this includes a right to silence and a right not to self incriminate oneself. Whether any of our penalties are “criminal” for the purposes of Article 6 remains in issue. But if ultimately it is determined that some of them are, we want to be sure we have not accidentally infringed those rights. We have therefore decided to make it clear to customers that they do not have any obligation to incriminate themselves, whilst at the same time drawing their attention to the potential to reduce penalties by making a disclosure and co-operating with the enquiry.

We have issued guidance to Inland Revenue staff to cover what should be said to customers at meetings or in correspondence at the stage in a case where it becomes clear that penalties are likely to be considered.

It has been practice to issue leaflet (IR160) explaining penalties to customers at the point penalties were being considered, this leaflet will continue to be issued. We will however also offer the advice that the extent to which customers co-operate and provide us with information is entirely a matter for them. A new leaflet on Public Funding (previously Legal Aid) will also be provided at this time.

Further details of the guidance to our staff can be found on the Inland Revenue web site at www.inlandrevenue.gov.uk/specialist/humanrights.pdf

Value Added Tax - Flat Rate Scheme

1. Computation Of Profits Case I/II Schedule D

2. Service Companies (“IR35”) Legislation-Deemed Payment Calculation

An optional VAT flat rate scheme was introduced with effect from 24 April 2002 by FA2002/S23. The scheme is available to all businesses with a VAT exclusive annual taxable turnover of up to £100,000 in the year of entry to the scheme, and with a VAT exclusive turnover, including the value of exempt supplies and other non taxable income, of up to £125,000.

A business that joins the scheme avoids having to account internally for VAT on all purchases and supplies, and instead calculates its net liability by applying a flat rate percentage to the tax inclusive turnover. The flat rate percentage depends upon the trade sector into which a business falls for the purposes of the scheme. Full details of the scheme are included in VAT Notice 733 Flat rate scheme for small businesses, which is available on the internet at www.hmce.gov.uk/forms/notices/733.htm or in printed form by telephoning 0845 010 9000.

Computation Of Profits Case I/II Schedule D

Our view on how profits chargeable under Case I/II of Schedule D are to be computed by businesses who adopt the scheme is as follows.

Businesses draw up their accounts on the VAT exclusive or on the VAT inclusive basis. Which ever method is used will result in the same profits being charged under Case I/II of Schedule D over the lifetime of the business.

Where the exclusive accounting basis is used

All VAT on inputs and outputs,including the amount due under the flat rate scheme, is taken to a separate VAT account. In the financial statements any balance on that account at the accounting date in respect of VAT, which cannot be recovered from HM Customs and Excise, is debited to the profit and loss account (where it is likely to be included in either administration costs or with other operating costs). The VAT not recovered is an allowable expense in computing the business profits for the purposes of Case I and II of Schedule D.

Any balance on the account that is an excess of VAT that is not due to be paid over to HM Customs and Excise, is credited to the profit and loss account (where it is likely to be included with other operating income or deducted from expenses). This is a taxable receipt of the business for the purposes of Case I and II of Schedule D. The reason for this is that VAT is an incidental cost of being in business. The gross payments from customers are received in the course of business and any VAT element included in those payments that does not have to be paid over to HM Customs and Excise does not lose that business nature.

Example 1

A business has sales, net of VAT, of £80,000, with VAT received from customers of £14,000 (£80,000x17.5%), giving gross sales of £94,000. Expenses, net of VAT, total £50,000, with VAT paid on expenses of £8,750 (£50,000x17.5%). A new machine is purchased (qualifying for capital allowances) at a cost of £2,350, including VAT of £350. Flat rate VAT is paid to HM Customs and Excise of £5,640 (£94,000x6%).

VAT account

	DR £	CR £
VAT collected on sales		14,000
VAT paid on expenses	8,750	
Flat rate scheme VAT paid	5,640	
VAT paid on machine	350	
Profit and loss account		740
	14,740	14,740

Case I profit computation

Sales	£80,000
Expenses (including 'irrecoverable' VAT £740)	£50,740
Case I profit	£29,260

Qualifying expenditure for capital allowances £2,000 (£2,350-£350)

Example 2

As Example 1 but expenses net of VAT, total £40,000, with VAT paid of £7,000 (£40,000 x17.5%).

VAT account

	DR £	CR £
VAT collected on sales		14,000
VAT paid on expenses	7,000	
Flat rate scheme VAT paid	5,640	
VAT paid on machine	350	
Profit and loss account	1,010	
	14,000	14,000

Case I profit computation

Sales	£80,000
Other operating income- surplus VAT	£1,010
	£81,010
Expenses	£40,000
Case I profit	£41,010

Qualifying expenditure for capital allowances £2,000

Where the inclusive accounting basis is used

Turnover will include all the VAT charged to customers but it should exclude the amount paid to HM Customs and Excise under the flat rate scheme. Expenses will include all VAT paid on those expenses.

For example, taking the same figures used in the previous Example 1 above

Sales	£94,000	(£80,000 + VAT charged to customers of £14,000)
Less flat rate VAT	£5,640	(£94,000 x 6%)
	£88,360	
Expenses	£58,750 -	(£50,000 + VAT £8,750)
Case I Profit	£29,610	

Qualifying expenditure for capital allowances £2,350

2. Service Companies ("IR35") Legislation-Deemed Payment Calculation

The amount to be included under Step 1 of the deemed payment calculation is the VAT exclusive amount whether or not the Flat Rate scheme is adopted.

miscellaneous

Self Assessment: Extension of Deadline for PAYE Electronic Filers

Starting from 4th October 2002, the Self Assessment system will be enhanced so that tax underpayments of £2000 or less can be automatically collected through the PAYE code for the tax year 2003/2004. This enhancement means that we can extend the dates by which an electronically filed tax return needs to be submitted to the Inland Revenue in these types of cases.

The new extended dates for automatically coding out underpayments are:

New date	Electronic method for sending tax return
29.12.2002	Electronic Lodgement Service (ELS) - 2001/2002 tax returns sent using ELS need to be sent by this date
30.12.2002	Internet - 2001/2002 tax returns sent over the Internet need to be sent by this date

Currently, an underpayment can only be collected through a restriction of the PAYE code number where the return is filed by 30 September.

Tax Law Rewrite - The Draft Income Tax (Earnings and Pensions) Bill

The Tax Law Rewrite project (TLR) is preparing its second rewrite Bill, for introduction in the current session of Parliament. The Bill will deal with the charge to income tax on employment income, pension income and social security income. It will come into force on 6 April 2003.

The Bill will not make any significant changes to the law. Like the Capital Allowances Act 2001 it will rewrite the current law with only minor changes.

A rewrite Bill is unlike a traditional tax consolidation. The law has been rewritten to make it clearer and easier to use. A tax consolidation Bill simply rearranges the existing law.

The legislation has been made easier to use by: -

- restructuring the law to make the order more logical;
- rewriting the words in language that is more modern, for example "emoluments" will be replaced by "earnings", and using shorter sentences;
- breaking up existing long sections to bring out the rules more clearly;
- grouping similar or related rules together as far as possible; and
- providing better signposts to other provisions that might be relevant.

As part of this process minor inconsistencies in the law have been corrected. Extra-statutory concessions and certain well-known and accepted practices have been included. The new Bill will rewrite parts of ICTA and other legislation and the rewritten provisions will be repealed.

The Bill will introduce new words, phrases and statutory references. These changes will affect both the Revenue and tax practitioners. One change is that a familiar name from the schedular system of tax will disappear. The label "Schedule E" will go, to be replaced by more descriptive terms.

The new terms will vary according to context, so "employment income", "pension income" or "social security income" will be used as appropriate. We suggest "PAYE income" is used to identify the income to which PAYE may apply. Not all income taxed by the Bill will fall into this category because the pension and social security income Parts include income that is taxed under Schedule D in the current law.

The draft Bill and accompanying explanatory notes can be viewed on the TLR page of the Revenue website, www.inlandrevenue.gov.uk/rewrite. If you would like a copy of the draft Bill and notes, any further information about the Bill and its implications, or information about the project generally, please write to:

David Mutton
Room 826
Bush House
South West Wing
The Strand
London
WC2B 4RD

or e-mail him at: david.mutton@ir.gsi.gov.uk.

Section 55 FA 2002: Tax relief for gifts of medical supplies and equipment.

Companies in the pharmaceutical industry sometimes donate medical products to countries in the developing world. This may be done in response to emergency appeals, but is more commonly done as part of a structured, long-term programme, aimed at controlling a disease endemic in a poor country.

Up to now the difficulty has been that UK companies which took part in such programmes and which gave products direct, rather than through a charity, risked being taxed on those gifts. This is because of the case law established in Sharkey v Wernher (36TC275) concerning goods taken out of the business other than by way of a sale in the normal course of trade. This requires that an amount equal to the market value of the product donated be added back to the company's taxable profits to represent the sales foregone.

The Government has addressed this in Section 55 of the Finance Act 2002. The section provides that no such tax charge will arise where companies make gifts of medical supplies and equipment out of trading stock, provided that these are made for humanitarian purposes and for human use. It also ensures that the costs of transportation, distribution and delivery are tax deductible. The measure builds on Section 83A ICTA 1988, which was introduced by the Finance Act 1999. Section 83A provides a similar relief for donations of trading stock (of any kind) made to charitable bodies in the UK.

We have been asked whether this measure will encourage inappropriate donations. We do not think so given that companies already receive relief for donations in kind made to UK charities and there is no evidence to suggest that this has led to abuse. The instances that have been drawn to our attention appear to arise in countries whose tax regimes provide an extra credit for stock donations. Our legislation only removes a tax charge, and leaves the donor company in much the same financial position as if it had scrapped the stock.

The World Health Organisation has drawn up guidelines on responsible donations of medicines, covering matters such as their suitability, shelf life, labelling, and delivery. These can be accessed at www.who.int/medicines/library/par/who-edm-par-99-4/who-edm-par-99-4.doc. We will accept that donations which meet the WHO guidelines will also satisfy our condition of being made for humanitarian purposes.

No claim form is being provided, and there is no obligation to make entries in the tax return or computations referring to this relief. Any company which requires further information about Section 55 may consult the Inspector who handles its day to day tax affairs.

Guidance on Section 55 FA 2002 will be included in the Inspectors Manual. An advance copy of this material is set out below.

IM1142a : introduction

S55 Finance Act 2002

FA02/S55 provides a relief supplemental to ICTA88/S83A for corporate donations of medical supplies and medical equipment for humanitarian purposes anywhere in the world, without restriction to registered charities.

IM1142b : background

Pharmaceutical companies sometimes take part in programmes aimed at the treatment or eradication of diseases in developing countries by supplying medicines or vaccines, or equipment, free of charge. They do this in co-operation with the public health authorities in the recipient country, and often under the auspices of international aid organisations or the World Heath Organisation. In addition, companies may make occasional donations in response to an emergency appeal from a country affected by natural disaster.

IM1142c : open market value rule dis-applied

Where a company makes a gift, out of trading stock, of medical supplies or medical equipment, for human use, and for humanitarian purposes, then the case law rule requiring the open market value of the gift to be brought in as a trading receipt is dis-applied. In addition, any costs incurred in the transport and distribution of the donated products will be deductible in the Case I computation.

IM1142d : benefit received by the donor or a connected person

Exceptionally, if the company or any connected person receives a benefit from the making of the gift, the amount of the benefit is to be brought into charge as a taxable profit. An example would be if a UK manufacturer donated products on the understanding that an overseas affiliate was given preferential terms for the supply of other goods or services.

IM1142e : de-regulatory nature of legislation

This is intended as a de-regulatory measure. No claim form, or entry on the CT600 Return or computations, is required. The following further guidance is provided to help reply to companies who request information about claiming the relief.

IM1142f : World Health Organisation Guidelines

The legislation requires not simply that the medical supplies or equipment concerned are given for human use, but in addition that the gift is made 'for humanitarian purposes'. This further condition reflects the broad intention of the provisions, which is to encourage responsible and appropriate donations.

The World Health Organisation produces Guidelines for Drug Donations. They are accessible at http://www.who.int/medicines/library/par/who-edm-par-99-4/who-edm-par-99-4.doc

Cases which fall within the WHO Guidelines should be accepted as meeting the condition that the gift is made for humanitarian purposes. If the circumstances of the case give any reason for doubting that the gift was made for humanitarian purposes, advice should be sought from Business Tax 1/2, Room 4E7, 4th Floor, 22 Kingsway, London, WC2B 6NR

M1142g : definitions

The term "medical supplies and medical equipment" should be interpreted broadly. All medicines or vaccines for human use are included. "Equipment" includes

- equipment required for the delivery and administration of medicines e.g. syringes; and
- other equipment appropriate to the situation such as bandages, medical appliances; and
- preventative equipment such as mosquito nets.

IM1142h : effective date

The relief applies to gifts made on or after 1st April 2002.

Revenue Prosecutions

The Inland Revenue has a policy of selective prosecution involving the most serious cases across the whole range of the tax system. The Board sees this as an important part of it's strategy to deter tax fraud and evasion. As part of the wider publicity for this strategy, details of Revenue prosecutions are occasionally published in Tax Bulletin.

Three Jailed For £960,833 Tax Evasion

Three tax cheats, Francis Jenn, Patricia Jenkins and Carol Hajas were jailed at Kingston Crown Court recently after each pleaded guilty to cheating the Inland Revenue.

The defendants had each admitted charges of common law cheat which arose from their failing to notify the Inland Revenue of income received (and chargeable to tax) as rents from a number of properties over a 15 year period. Jenn also pleaded guilty to a similar charge over Capital Gains Tax.

Jenn received considerable credit for entering his guilty plea in April 2001 and was sentenced to 24 months imprisonment for the income tax charge with a further 9 months to run concurrently for the CGT charge.

Jenkins and Hajas pleaded guilty in February 2002 which, was the day that their trial was due to commence and each was sentenced to 30 months imprisonment.

In passing sentence, His Honour Judge Behar said: "This was an elaborate fraud, you have used false identities with variations of your own names and used names of others without their permission, people who swindle the public purse betray the honest person.

I have considered the pre-sentence reports and have borne in mind your guilty pleas and your previous good character. I accept that you recognise your guilt but these are serious offences and custodial sentences are justified."

Over a period of some 15 years the three defendants purchased over 70 properties in London and Kent, the majority of which were let. In order to conceal the rental income they purchased some properties in false names, transferred properties between themselves and used over 65 bank and building society accounts to receive the rents, some of these also in false names.

Only Jenn was known to the Revenue but he had returned very modest income as a self - employed tour operator. No tax records could be found for Jenkins and Hajas.

Investigators from the Special Compliance Office worked on the case and obtained evidence which, enabled criminal charges to be brought against all three. They were arrested and charged on 15 March 2000. Search warrants obtained under Section 20c TMA 1970 were signed by a High Court Judge for a number of addresses and a substantial amount of incriminating documentation was seized.

At a confiscation hearing recently His Honour Judge Behar made confiscation orders in the sum of £833,333 in respect of Jenkins and Hajas. A default sentence of 4 years imprisonment was set in respect of each defendant should they fail to satisfy the orders within 2 years. Due to technical difficulties a Confiscation Order was not made against Jenn however, His Honour did make a Compensation Order of £349,888 and additionally fined Jenn £483,345 making a total of £833,333. A default sentence of 2 years in respect of each order was set should Jenn fail to satisfy the Order within 2 years.

In addition each defendant was ordered to pay £59,333 in costs.

This is one of a series of cases where the courts have found that the benefit to the defendants from their crime is not restricted to the tax evaded. For the defendants against whom Confiscation Orders were made, the benefit obtained was £1,666,666 whereas, the tax loss and interest thereon totalled £610,844.

Inland Revenue Statements of Practice and Extra-Statutory Concessions issued between 1 August 2002 to 30 September 2002

Extra Statutory Concessions

There have been no Extra Statutory Concessions for this period

Statements of Practice

Number	Title	Date
SP 2/02	Exchange rare fluctuations	30/09/2002 (revised)
SP 3/02	Tax treatment of transactions in financial futures and options	30/09/2002 (revised)
SP 4/02	Definition of financial trader for the purposes of paragraph 31 Schedule 26 Finance Act 2002	30/09/2002 (revised)

You can get copies of SPs and ESCs by telephoning 020 7438 4266.

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, Mr Shell Makwana, Room G7, New Wing, Somerset House, Strand, London, WC2R 1LB or e-mail Shell.Makwana@ir.gsi.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 2002 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".

If you would like information regarding Tax Bulletin subscription or distribution please contact Mr Bryan Kearney, Room G7, New Wing, Somerset House, Strand, London, WC2R 1LB. Telephone: 020 7438 6373. For more general information regarding Tax Bulletin, please contact Mrs Jayne Harler, Assistant Editor, on 020 7438 7842 or at the address provided above.

COPYRIGHT

Tax Bulletin is covered by Crown Copyright. There is no objection to firms copying the Bulletin for their own use. Anyone wishing to republish Tax Bulletin or extracts more widely should write for permission to Miss Glenda Bishop, Room G12, New Wing, Somerset House, Strand, London, WC2R 1LB.

© Crown Copyright 2002