UHY Hacker Young
Chartered Accountants

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Tax Update

Our summary of the latest tax issues

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The world according to GAAR

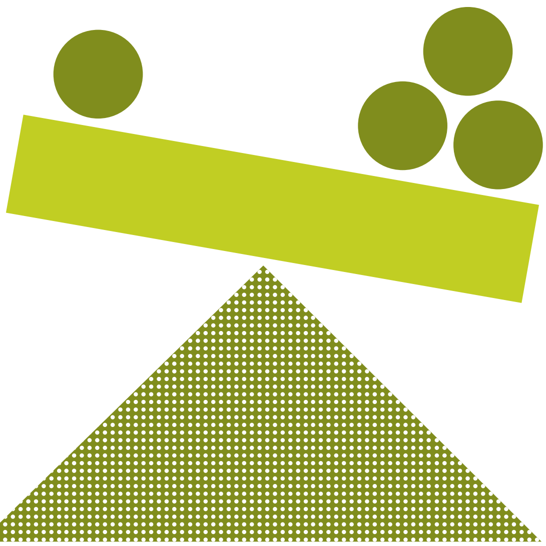
If you are considering entering into any transactions that result in a tax benefit arising then the General Anti-Abuse Rules (GAAR), summarised below, may affect you.

This summer sees the enactment of the GAAR after quite a long period of gestation.

During this period the GAAR has moved from a broad spectrum approach to one more targeted on the most abusive arrangements. The aim is to catch the artificial schemes that were generally seen as being intolerable, but to allow the middle-ground of conventional tax planning to continue unaffected. So, how will things change after Royal Assent in mid-July?

For the GAAR to apply, three criteria must be met:

- there is an arrangement involving tax avoidance;
- the conclusion can be reached reasonably that obtaining a tax advantage was the main purpose or one of the main purposes of the arrangement;
- in relation to the relevant tax provisions, the arrangement can be seen as abusive if it cannot be regarded reasonably as a reasonable course of action in the circumstances surrounding the arrangement.



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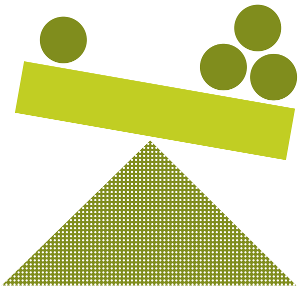


The world according to GAAR (ctd)

Of these criteria, the third, containing the so-called double reasonableness test, is least obvious in meaning and may be prone to a good deal of interpretational debate come implementation. Broadly, the question being asked is, 'would the transaction go ahead in this way without the tax advantage that is being obtained?'

This question may not be easy to answer for many arrangements and a mechanism is needed to deal with this uncertainty. There is guidance from HM Revenue & Customs (HMRC) and the GAAR Advisory Panel, which is independent from HMRC. The Advisory Panel will review and approve guidance issued by HMRC and will review specific cases and offer non-binding opinions in such cases. These opinions should provide helpful guidance on how the GAAR are to be implemented.

The GAAR will only apply to transactions entered into after they have been enacted. For arrangements that straddle enactment, steps that occur before and after will need to be viewed separately. If the steps that occur after commencement are abusive, then the GAAR will bite but, if these steps are not abusive in themselves, HMRC cannot refer back to any earlier steps in making a judgement about the later steps. Whereas, a taxpayer can make reference to pre-GAAR steps in seeking to put post-GAAR steps into context.

In summary, the GAAR aim to clamp down on egregious tax planning arrangements, whilst leaving planning that is commercial free from interference. Since there is a distinct cut-off between steps that are taken before and after the GAAR come into force, any arrangements that taxpayers think may be caught by the new rules should be undertaken before mid-July, although there is no guarantee that such arrangements will not be scrutinised by HMRC using existing powers. If you are considering entering into any transactions that result in a tax benefit arising, please speak to your usual UHY tax partner.

The annual tax on enveloped dwellings

The ATED, previously known as Annual Residential Property Tax, will apply with effect from 1 April 2013. The tax applies to 'dwellings' that are owned (wholly or partly) by a company, by a partnership where one of the partners is a company, or by a collective investment vehicle. No distinction is drawn between offshore and UK companies.

A dwelling is all or part of a residential or mixed-use UK property. Where connected persons also have an interest in the dwelling, the two interests will be added together.

The ATED charge

The charge applies in respect of dwellings that are valued at £2million or more as at 1 April 2012 or upon acquisition, if later. The tax payable is fixed according to bands based on the value of the property:

- Value £2m - £5m: tax £15,000
- Value £5m - £10m: tax £35,000
- Value £10m - £20m: tax £70,000
- Value £20m+: tax £140,000

If the dwelling is owned for only part of the year, ATED will apply on a proportionate basis.

Reliefs

There are circumstances in which a dwelling might attract relief, including where:

- it is let to a third party or is held as part of a property trading business and is not occupied by anyone connected with the owner;
- it is held for charitable purposes;
- it is a farmhouse of appropriate character and is occupied by the farmer;
- it has been bought as part of a commercial property development business with the intention to re-develop and sell on and is not occupied by anyone connected with the owner;
- it is accommodation provided by a commercial business to certain employees.

Relief can be claimed only by completing and submitting an ATED return.

Valuations and returns

The first valuation date is 1 April 2012 or the date of acquisition if later. Values at 1 April 2012 will be used for five years; all properties paying ATED will need to be valued again as at 1 April 2017.

If you believe that the value falls within 10% of a banding threshold you can ask HMRC to confirm their agreement by asking for a Pre-return Banding Check (PRBC).

If you believe that a property is potentially liable to ATED (regardless of whether it is likely to qualify for relief) you must complete and submit the appropriate return.

For the first year of ATED (the 12 months beginning 1 April 2013) the return needs to be made to HMRC by 1 October 2013 and any tax paid by 31 October 2013. For all future years the deadline for the return and the payment will be 30 April. If you fail to submit a return, submit it late, make a mistake on it or pay the tax late, you may be liable to penalties and/or interest.

Capital Gains Tax

HMRC are also introducing a new Capital Gains Tax (CGT) charge that similarly catches residential properties owned by corporate bodies. All corporates will be chargeable to CGT at the main (28%) rate in respect of disposals on or after 6 April 2013 but only if any gain has arisen since that date. The pre-6 April 2013 element of the gains will continue to be treated as before. The same reliefs will apply as for ATED.

What next?

The legislation bringing ATED into effect will be included in Finance Act 2013. At present HMRC advise that PRBCs will be available from 1 June 2013 and that it will be possible for you to submit the ATED returns online from 1 August 2013. In the meantime you should obtain valuations as at 1 April 2012 if you have not already done so. You should seek professional advice on likely eligibility for reliefs and (if you have not already considered it) the possibility of restructuring or change of use to avoid a future charge.

The statutory residence test

A new statutory residence test (SRT) will apply with effect from 6 April 2013. As set out in the Finance Bill 2013 the test will, for the first time, define UK tax residence for individuals in law.

If you meet any of the following **automatic overseas tests** you will not be considered UK resident for the tax year in question:

1. You were resident here for one or more of the preceding three tax years but spend fewer than 16 days in the UK in the tax year.

2. You were not resident here for any of the three preceding tax years and spend fewer than 46 days in the UK in the tax year.

3. You work full-time overseas, there are no significant breaks from your overseas work, you spend fewer than 91 days in the UK and the number of days on which you do more than 3 hours work in the UK is less than 31.

If you do not meet any of the automatic overseas tests, but meet any of the following **automatic UK tests** you are resident in the UK for the tax year:

1. You spend at least 183 days in the UK in the tax year.

2. There is a period of at least 91 consecutive days (of which at least 30 fall within the tax year concerned) when you have a home in the UK in which you are present for at least 30 days during the tax year and you either have no home overseas or have an overseas home or homes in each of which you spend fewer than 30 days during the tax year.

3. You work 'sufficient' hours in the UK over a period of 365 days during which there are no significant breaks from UK work.

If you do not meet any of the automatic tests you need to consider the **sufficient ties test**. Whether you have sufficient UK ties will depend upon whether you were resident here for any of the previous tax years and the number of days that you spend in the UK in the tax year in question. UK ties are as follows:

- Family tie: your spouse/civil partner/common law equivalent or minor child is resident in the UK.

- Accommodation tie: you have accessible accommodation in the UK and make use of it during the tax year.

- Work tie: you work in the UK for at least 40 days (and for at least three hours a day) during the tax year.

- 90-day tie: you spent 90 days or more in the UK in either of the previous two tax years.

- Country tie (applies to 'leavers' only – see below): the UK is the country in which you are present at midnight on the greatest number of days during the tax year.

The legislation draws a distinction between those who were not resident in the UK during any of the previous three tax years (known informally as 'arrivers') and those who were resident in the UK in one or more of those preceding three tax years (known as 'leavers'). The number of days spent in the UK is compared with the number of ties to determine residence status, as follows:

Days spent in UK	Number of ties which make arrivers resident	Number of ties which make leavers resident
16 - 45 days	Always non-resident	4 ties or more
46 - 90 days	4 ties	3 ties or more
91 - 120 days	3 ties or more	2 ties or more
121 – 182 days	2 ties or more	1 tie or more

Split-year treatment

The SRT puts on a statutory footing the old rules under which an individual who is resident in the UK for a tax year may in certain circumstances 'split' that year such that they are treated as resident for one part of it and non-resident for another.

Transition

The SRT comes into force for the 2013/14 tax year. The old rules continue to apply for earlier years except that if, in order to determine residence status for the first three SRT years it is necessary to reach a conclusion as to your status for a pre-SRT year, you may elect for the SRT rules to be applied in respect of that year.

The introduction of the SRT will provide much-needed certainty to an area of law that is lacking in clarity. It remains the case, however, that despite a long consultation period, the legislation as put forward in Finance Bill 2013 is in itself complex and still in need of amendment. Further changes are expected and for this reason any guidance must be treated as provisional.

Limited liability partnerships and employees

Two separate announcements were made earlier this year surrounding Limited Liability Partnerships ('LLPs') in relation to both National Insurance Contributions (NICs) and tax anti-avoidance measures.

The Budget announcement included two LLP related anti-avoidance proposals and, HMRC have issued a consultation document on measures to "remove the presumption of self-employment for LLP partners" and to "counter the artificial allocation of profits to partners to achieve a tax advantage".

A further announcement from HMRC in April, relating to NICs, stated that they now require all sleeping and inactive limited partners (those partners who do not take an active part in the running of a business) to pay class 2 and class 4 NICs with effect from 6 April 2013.

Anti-avoidance proposals announced

Currently, an LLP is regarded as a 'partnership' for tax purposes, meaning members are considered to be self-employed and are taxed on their share of the LLP's profits, whether they are withdrawn or retained. The first of the two anti-avoidance measures being considered by the government is the proposal to "remove the presumption of self-employment for LLP partners". This is to deal with the issue of disguised employment reflecting the concern that a growing number of businesses are using LLPs to avoid paying NICs to people given the title of partner, but without the associated trappings of the position. The measures could result in LLPs paying NICs for those partners who, whilst currently classed as partners, would be considered to be employees in many other ways.

The other proposal to "counter the artificial allocation of profits to partners to achieve a tax advantage" will look to deal with the situations where a partnership or LLP includes a corporate body as a member. The vehicle has then been used to shelter and/or defer profits using corporate tax at lower rates than the partners' personal tax rates. This is typically done in tandem with a non or low tax paying spouse as a shareholder, or by simply waiting until the partner themselves has a lower level of income. The consultation will also take a view on partners being introduced to an LLP and taking profits at levels which do not reflect their value to the business.

Legislation on these two issues is expected in the Finance Bill 2014 with rules coming into force from 6 April 2014.

National Insurance Contributions

Class 2 NICs are a flat rate weekly liability of £2.70 a week and are payable unless the partner within the LLP is under 16, over the pension age, is granted the small earnings exception (for earnings of less than £5,725 per annum), is a married woman or widow with reduced liability or can claim deferment on account of other employments.

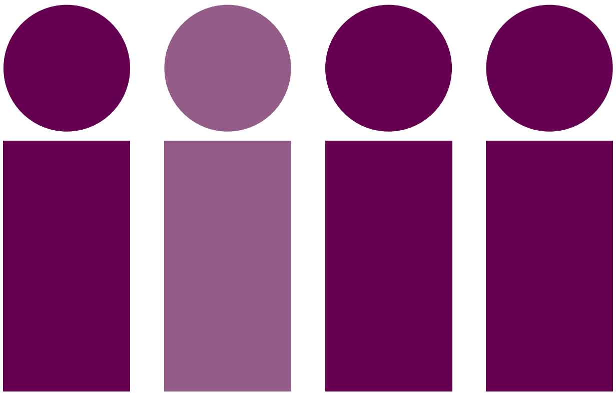
Class 4 NICs are assessed annually at the current rate of 9% on profits between £7,755 and £41,450 and at 2% on profits over £41,450. It is worth noting that class 4 NICs are due on the profits of a trade, profession or vocation subject to income tax. Accordingly you are not liable on investment income (dividends, interest, income from property).

It was made clear that sleeping and inactive partners who have not paid NICs in the past will not be liable to make payments for the earlier years. However, pending any further clarification, sleeping and limited partners should ensure they register for NICs using form SA401 which can be found on the HMRC website.

So where does this leave the LLP?

At this stage it is thought that a properly drafted partnership agreement, detailing the rights and obligations of partners commensurate with the position, will not be affected. Rather, the anti-avoidance proposals are likely to affect those LLPs (i) who whilst admitting more junior members as partner, they are treated and act as employees in all other ways; and (ii) with corporate or family members with the aim of reducing or deferring tax. However, this matter will develop and further information will be available after the consultation period.

Happy 2nd Birthday XBRL



It is just over two years since HMRC introduced mandatory filing of company accounts and tax computations in eXtensible Business Reporting Language (XBRL) format. In this article we give an update on its impact and any likely developments.

Software houses were generally slow to rise to the challenge of this new tagging requirement, with some not ready until the 11th hour, but we are glad to say ours lead the way.

HMRC's initial objective was to get all companies filing electronically to a reasonably high standard. To encourage this, HMRC stated that they would apply a soft landing approach for the first two years as long as the company had made a reasonable attempt to tag a majority of items that appeared on the tagging list. The list contains some 1500 tags which must be used if the item appears in a company's accounts or tax computation. HMRC set minimum criteria for required tags to enable the tax return to get through the gateway and, two years on, HMRC have confirmed that nearly 3.5 million tax returns have been delivered at the top end of HMRC's tagging expectations. As the process is automated it has saved HMRC a huge amount of clerical effort in re-keying information previously sent in by post.

> "HMRC have confirmed that nearly 3.5million tax returns have been delivered at the top end of HMRC's tagging expectations"

Over the last two years HMRC have gathered over 300 million pieces of XBRL data which it will now use to:

- make better targeted compliance checks;
- understand their customer base better; and
- make evidence based tax policy decisions.

HMRC targeting returns with a low volume of tags

HMRC announced last year that there will not be any major change to the tagging list, except for some minor improvements to the tagging of the profit and loss account, which is expected to be introduced later this year. HMRC have also re-confirmed that there will be no further short term changes, primarily due to the recent developments in relation to UK GAAP following the publication of FRS 101 and 102 and the EU Micros Directive. It is expected that a new tagging list will be produced in the future to cater for these new developments but, in the meantime, if any company adopts these standards early, they should use the most appropriate tags from the existing list.

The only word of caution is that HMRC have confirmed that they will now be paying increased attention to tax returns where the number of tags are low or clearly incorrect, with these companies at greater risk of a compliance check and clients should speak to their partner if they have any concerns relating to the tagging of their accounts.

Real time information

As an employer, you should be aware of your obligation to comply with the new regime and will be filing your payroll and PAYE data electronically. If not, a quick visit to our website at http://www.uhy-uk.com/resources/fact-sheets/ may help.

Whilst it is encouraging that HMRC have issued detailed guidance notes, you should be aware they may not be all that they seem.

National Insurance Numbers

At one point the guidance notes insist that you should enter the correct National Insurance Number (NINO) for each employee, implying that if you do not have one you cannot comply. Thus they seem to suggest that you need to withhold payment from the employee until the NINO is obtained in order to comply with the real time information (RTI) requirements. This is not the case. What you should not do is enter a temporary number, but rather leave it blank.

Occasionally you may be confronted with a suspect NINO, for example, one containing just 6 digits. If so you can send HMRC a NINO Verification Request (NVR). This should be on your payroll software, but should not be used until after your first Full Payment Summary (FPS). Indeed, HMRC recommend you wait two weeks after submitting your first FPS before submitting a NVR.

Nil returns

Another potential trap is where you do not pay any wages or salary for a given month, perhaps because the only employees are directors who are not paid monthly or maybe there was only one member of staff and you are currently in between appointments. Even though there are no payments to report on the FPS we recommend that you file a nil Employer Payment Summary (EPS) to avoid HMRC issuing estimated demands. We understand HMRC intend to rectify the problem of registering annual schemes in July.

Joiners

For joiners who give you a form P45, but who have another employment or pension income with effect from April 2013, you should apply the tax code shown on the P45 and **not** at the basic rate, as previously advised by HMRC.

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