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## WELCOME

**Welcome** to the third (Autumn) edition of Tax Pulse in 2022. Like everyone else, we at Rawlinson & Hunter have been reflecting on the wonderful achievements of the Queen in galvanising the country through so many trials and tribulations over the decades, and the sense of loss which we feel. It is good to note that His Majesty King Charles III starts his reign buoyed up on a wave of public goodwill and we wish him well in the task that lies ahead.

After such a hot Summer, Autumn has arrived early this year and the leaves have been falling faster than Sterling against the US Dollar. As well as a new monarch, we have a new resident of number 10 and a new Chancellor of the Exchequer, whose somewhat radical policies and proposed tax cuts have already set hares running, causing the value of the pound to tumble and the Bank of England to temporarily buy government bonds. It will be interesting to see where we end up but let's be optimistic…

In this edition of Tax Pulse we look at the subject of tax avoidance, and how the perception of what is acceptable has shifted significantly over the decades. We take a high level view of the newly introduced public Register of Overseas Entities, the intention of which is to enable the beneficial owners of UK real estate to be identified. We provide a much needed update on where we are with the 'Making Tax Digital' project, and in our regular 'US Tax Corner' we look at the differing treatments either side of the pond of business and investment structures. In our guest article, we are delighted to have a contribution from Kate Landells, a top family law practitioner and partner at Withers LLP, on the subject of the new 'no fault' divorce provisions and the collaborative approach to divorce. Our final item focuses on Steph Bailhache, our events and marketing coordinator, whose artistic talents are responsible for the hopefully obvious improvement in the appearance and design of our publications.

We hope that you enjoy reading Tax Pulse and if you have any feedback to give us or suggestions for future items, please direct your comments to the editorial team.

***The Partners***

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## REGISTER OF OVERSEAS ENTITIES OWNING UK LAND

***Read this if you own a home or other UK real estate through an offshore company***

Legislation to set up a Register of Overseas Entities was rushed through Parliament in response to events in Ukraine. The Economic Crime (Transparency and Enforcement) Act 2022 – the Act - received Royal assent on 15 March 2022. The intention is to make publicly available the names of, and other information in relation to, individuals who are the beneficial owners of foreign entities, typically companies, which own UK land. Information about the entity, and in some cases its managing officers, is also required. The Act also includes provisions dealing with unexplained wealth orders and sanctions.

After what felt like a long gestation period, the Register of Overseas Entities opened on 1 August 2022. There is a six month transitional period for initial registrations to be made, which expires on 31 January 2023. Initial registrations include entities which were holding UK land on 28 February 2022, unless the land in question was acquired before 1 January 1999 (or 8 September 2014 for land in Scotland). There is also a requirement for annual updates to be filed.

This brief description belies the complexity of the legislation. It is necessary to identify registrable beneficial owners of the entity who have, directly or indirectly, more than 25% of the shares or votes in the overseas entity, or the right to appoint or remove a majority of the board of directors. An individual is also a registrable beneficial owner if he/she has significant influence or control over the overseas entity, and may be a registrable beneficial owner if he/she exercises significant influence or control over a trust or partnership which satisfies these conditions.

Where a registrable beneficial owner is a trustee, the application for registration must include certain information about the trust, but these details will not be publicly available. Other information submitted as part of the registration will be available to the public, except for residential addresses and the day of the month when an individual was born (the month and year of birth only will be available to the public).

The Act imposes a duty of care on the overseas entity to take reasonable steps to identify registrable beneficial owners, including the issue of information notices requiring a response within one month. Information submitted as part of the registration must be verified as true by a UK 'relevant person' subject to anti-money laundering regulations. Criminal sanctions may apply for non-compliance, including fines of up to £2,500 a day, or a prison sentence of up to 5 years.

Two scenarios in particular may be problematic. Sometimes an overseas company will hold a UK property as nominee for an individual. The company will need to register as an overseas entity, but who are its beneficial owners? Anyone owning more than 25% of the shares, for example, will be registrable, but if the individual, despite having no financial interest in the company, exercises significant influence or control over it, then he/she will also be a registrable beneficial owner. This is likely to be

the case if the nominee company is a special purpose vehicle, which has no activity other than holding the UK property for the individual.

The second case of potential difficulty arises where the legal entity holding the property is owned by a trust. If an individual exercises significant influence or control over the trust, he/she could be a registrable beneficial owner of the entity. This could be the case if the individual is a settlor with the right to revoke the trust, or a protector with significant powers, for example to replace the trustees.

As noted, the transitional period for filing initial registrations expires on 31 January 2023. We recommend that overseas entities, and their beneficial owners, talk to their offshore fiduciary or administrator, and start to collate the information required for registration, as soon as possible.

Please speak to your usual R&H contact if you wish to discuss any aspect of this note.

## MAKING TAX DIGITAL - WHERE ARE WE NOW?

***Read this if you have self-employment and/or property income***

### History and Rationale

Making Tax Digital (MTD) was first unveiled by the Government as long ago as 2015 as its grand project to modernise and digitise the UK tax system.  HMRC's sights appear to be set on becoming one of the most digitally advanced tax administrators in the world; they claim that, as a result of the roll-out of this initiative, UK taxpayers will find it easier to 'get their tax right' and 'stay on top of their affairs', with a secondary objective being the achievement of long term administrative cost savings. Such a long time has passed since the original announcement that we thought it worthwhile to provide an update on what is happening and where we are exactly in the lengthy gestation period of this project.

### Delays, Changes and Current Position

MTD was originally intended to go live for most businesses, including sole traders and landlords, from as early as 2018.  Since the Government's MTD roadmap was first published, in December 2015, there has been a series of delays and changes:

- In mid-2017 it was confirmed that, from April 2019, only VAT-registered businesses and organisations with taxable turnover above the VAT threshold would need to register and submit digital returns using the MTD for VAT service.

- In mid-2020 it was announced that businesses and organisations with turnover below the registration threshold which had voluntarily registered for VAT would also need to comply with the MTD for VAT rules from April 2022.  VAT-registered business are now using MTD-compatible software to submit VAT returns to HMRC, save for those which are exempt from using the MTD for VAT service.

- The Government also announced (in mid-2020) that, with respect to their first full accounting

periods beginning after April 2023, all sole traders and landlords with a combined turnover above £10,000 per annum would need to register and submit digital returns using the MTD for Income Tax service, with effect from April 2023.

- In September 2021 the Government postponed this filing requirement for sole traders and landlords (with combined gross income above £10,000 per annum) from April 2023 to 6 April 2024. Individuals who are resident or domiciled outside the UK will only need to submit to HMRC details of UK self-employment and UK property income via this service.

- As it stands, MTD for Income Tax will be extended to include general partnerships with gross income above £10,000 with effect from 6 April 2025. General partnerships, in this context, are those which are not limited liability partnerships, or partnerships with a corporate or other 'non-natural partner'. No MTD for Income Tax roll-out date has been announced with respect to those particular types of partnerships. MTD for Corporation Tax has also been reported as taking effect from April 2026, at the earliest.

Notwithstanding these shifting deadlines, it is clear that MTD is here to stay. MTD for Income Tax is the next phase of the initiative, so let's take a closer look at this.

**MTD for Income Tax - What is Involved?**

From 6 April 2024, those who are subject to MTD for Income Tax will be required to maintain digital accounting records. This information will need to be maintained either in software which can communicate directly with HMRC, or in some other software programme or spreadsheet using so-called 'bridging software' which can extract the relevant data and submit it to HMRC.

There will be exemptions from MTD for Income Tax for those who are 'digitally excluded', i.e. where it is not practical to use software to keep digital records, e.g. due to age, disability or location, or if the individual is a practising member of a religious society (or order) the beliefs of which are incompatible with using electronic communications or keeping electronic records. Trustees, personal representatives (of estates), and non-resident companies are also not required to make filings using the MTD for Income Tax service. There is also an exemption from reporting the income and expenditure attributable to foreign businesses of non-UK domiciled individuals, but this exemption is not expected to apply to those individuals who are deemed domiciled in the UK.

Unless you are exempt from MTD for Income Tax for one of the above reasons, or you have qualifying income of £10,000 or less, the following filings will need to be made with HMRC from April 2024:

- 'Quarterly updates' containing details of sole trader or landlord income and expenditure. These will need to be submitted within one month of the end of each quarter; for example, for the quarter to 5 July 2024, a quarterly submission will need to be made to HMRC by 5 August 2024. A 'calendar quarter election' can be made to allow quarterly updates to be made up to the end of the previous month; for example, income and expenditure for the three month period ended 30 June 2024 can be submitted by 5 August 2024.

- 'End-of-period statements' which contain details of the final taxable profit for the year. These will be due by 31 January following the relevant tax year and they are expected to replace the self-employment and property pages of the current Self Assessment tax return.

- A final declaration to be filed with HMRC in order to finalise an individual's overall tax position for the year is also anticipated.

Individuals with both sole trader and property income may therefore be required to make as many as 11 separate filings in a tax year! One might be forgiven for taking the 'cynical' view that the hoped for administrative and cost savings for HMRC are only achieved by transferring them onto the taxpayer……

Individuals registered for Self-Assessment and in receipt of self-employment and/or property income prior to 6 April 2023 are to be contacted by HMRC and advised whether they need to sign up for MTD for Income Tax. It would appear that the information included on the Self Assessment tax return for 2022/23 will form the basis of HMRC's advice to relevant taxpayers to register for MTD for Income Tax (prior to 6 April 2024).

As for those individuals who become sole traders or landlords after 5 April 2023, HMRC have indicated that the contents of their 2023/24 tax returns will be reviewed, once submitted, and they will then advise the relevant taxpayers whether to register for MTD for Income Tax (at a point after 6 April 2024).

With MTD for Income Tax rolling out in 18 months' time, a number of professional bodies are calling for detailed and practical guidance to be issued by HMRC as soon as possible. Having considered the initial guidance on the filing requirements of MTD for Income Tax it is unclear whether taxpayers will actually find it easier to 'get their tax right', but it will certainly, initially at least, involve more effort on the part of taxpayers and their advisers (with the associated costs)!

## TAX AVOIDANCE: GOING, GOING, (ALMOST) GONE?

***Read this if you want to know more about the changing attitude of the Courts towards tax avoidance.***

Tax avoidance, unlike tax evasion, is not illegal but usually involves using tax law in a way which is contrary to the intention of Parliament (or would be, if Parliament had considered it). Tax mitigation is the legitimate use of tax law, in the way intended by Parliament, to reduce one's tax liability. These three activities are very different but misinformation has sometimes led to a blurring of the lines between them in the general public's mind.

This article takes a look at the history of the judicial approach to tax avoidance and the measures which successive Governments have introduced to blunt its use.

Tax avoidance is as old as tax itself. An example: the window tax, introduced in 1696 by William III, was banded according to the number of windows in a house. Shortly after its introduction people bricked up their windows to avoid the liability; this is allegedly how the phrase "daylight robbery" came about.

For many years, the leading case on tax avoidance was the 1936 Duke of Westminster case. The Duke had entered into a series of Deeds with his staff to pay them annual sums effectively in lieu of what they previously received in wages. The legal question was whether these indeed were annual payments, in which case the Duke could deduct them from his liability to surtax, an earlier form of Income Tax. The House of Lords found in the Duke's favour, Lord Tomlin famously stating:
"Every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Acts

is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax."

At the time, the Lords opined on the so-called doctrine of "substance" i.e. whether one should focus on the legal implications and effect of the documentation or set aside the legal positon and focus on "the substance of the matter". The Lords concluded that the Duke was within the letter, if perhaps not the spirit, of the law, as it then stood, and he won his case.

However, there have been significant developments in the way that the Courts approach cases which involve tax avoidance, to the extent that the dicta of Lord Tomlin now appear somewhat quaint and outmoded.

In the 1980s, there were two landmark cases, W T Ramsay v Inland Revenue Commissioners and IRC v Burmah Oil Co. Ltd., which involved companies which had made substantial capital gains, entering into complex self-cancelling series of transactions that generated capital losses for the purpose of avoiding Capital Gains Tax. The judiciary in these cases developed what became known as the Ramsay principle: where a transaction has pre-arranged (sometimes circular) artificial steps that have no commercial purpose other than to save tax, the proper approach is to tax the effect of the transaction as a whole. This was relevant not only for Capital Gains Tax but also direct taxation generally.

The House of Lords decision in Furniss v Dawson further extended the Ramsay principle. The case involved a complex series of transactions intended to reduce Capital Gains Tax on the sale of a clothing business to a third party. The Court found in Inland Revenue's favour, arguing that in any case where there was a predetermined series of transactions containing steps that were only there for the purpose of avoiding tax, the tax is to be calculated on the effect of the "composite transaction" as a whole. The significance of the judgement was that the Ramsay principle was not restricted to self-cancelling transactions. It also set limits to the principle applied in the Duke of Westminster case that every man (or woman) is entitled to order their affairs so as to diminish the burden of tax. Lord Roskill's famous comments on the Furniss v Dawson decision was that the "ghost of the Duke of Westminster" having "haunted the administration of this branch of the law for too long" would now "suffice as exorcism".

The influential Willoughby case explored the distinction between tax avoidance and tax mitigation. The case involved a Professor who had invested for his retirement in offshore personal portfolio bonds - life insurance policies where the return on maturity is linked to a portfolio of investments selected by the policyholder. HMRC sought to bring personal portfolio bonds within the ambit of the transfer of assets abroad (TOAA) code, a long-standing anti-avoidance provision where if a tax avoidance motive could be imputed, the taxpayer could be assessed on the underlying income of the "person" abroad, in this case the income arising within the overseas life insurance bond. However, the Lords found that Willoughby's activities fell within the remit of tax mitigation, as Parliament had provided a specific tax regime to tax gains on life insurance bonds. The case distinguished the hallmarks of tax mitigation - where a taxpayer took advantage of a fiscally attractive option afforded by tax legislation and genuinely suffered the economic consequences of their choice – from tax avoidance, where the taxpayer reduced their liability to tax without incurring the economic consequences Parliament intended. In short, tax avoidance, in the context of the TOAA provisions, "is a course of action designed to conflict with or defeat the evident intention of Parliament".

The more recent Fisher case re-examined the avoidance/mitigation divide and the availability of a "motive defence" under the TOAA provisions. The case, involving the transfer of a UK betting duty

business to Gibraltar, is significant for several reasons. For brevity, we mention only two. First, tax does not need to be avoided to invoke anti-avoidance provisions, i.e. if a taxpayer subjectively intends to avoid tax, that may be sufficient. Secondly, where the avoidance of tax is intended to achieve some further economic end (in this case, the avoidance of betting duty and saving of the business were found to be inseparable), the motive defence will not generally be available, i.e. it was not Parliament's intention to look beyond tax avoidance to its consequences. The case also touched on aspects of EU law which is beyond the scope of this note.

As we have seen, the judiciary's attitude to tax avoidance has changed over time. Since the 1960s, the above and other cases including the evolving Ramsay principle have emphasised the judicial principle of establishing the purposive construction of statutes when examining taxpayer behaviour and, in particular, a series of related or composite transactions, i.e. interpreting the transaction(s) in the context of Parliament's intention when passing applicable tax legislation.

Successive Governments have given HMRC an arsenal of weapons to tackle tax avoidance:

- The Disclosure of Tax Avoidance Schemes (DOTAS) regime that enables HMRC to scrutinise the mechanics of tax avoidance schemes and identify and challenge their users. HMRC also publishes details of certain avoidance schemes it considers to be ineffective to dissuade taxpayers from participating in them.

- Follower Notices, which force taxpayers who may have used schemes defeated in another party's litigation to amend their tax returns to reflect the outcome of the decision, or otherwise face a tax-geared penalty.

- Accelerated Payment Notices, which, where there is an open enquiry or an appeal, require a taxpayer to pay the tax in dispute.

- The widely drafted and over-arching General Anti-Abuse Rule (GAAR) intended to counteract tax advantages that would, ignoring the GAAR, arise from arrangements which cannot "reasonably be regarded as… reasonable…" (!).

Where are we now?

Were the Duke of Westminster's case to be heard now, he would most certainly lose, (even if the law had not changed) because the case would be caught by Ramsay or the GAAR. Tax practitioners' views differ but there is broad consensus in the profession that tax avoidance at the extreme end of the spectrum is abusive and in some cases not far short of tax evasion, so abusive tax schemes should rightly meet with disapproval and be appropriately countered. Beyond that, there is seemingly widespread disagreement about the range of taxpayer behaviour, from legitimate tax planning to legal tax avoidance, that is not abusive.

Outside the tax profession, particularly amongst media, in the political sphere and the wider court of public opinion, there seems to be a pervasive and very vocal disapproval of even what in practice is ordinary and legitimate tax planning. As we enter a period of economic downturn with severe

pressures on the public purse, such views are likely to harden and the reputational costs of doing something non-vanilla will continue to grow. Perhaps the enduring legacy of the Duke of Westminster case is that what was once acceptable has become unacceptable and that what is acceptable now might not always be - or may not be so for too long at all.

Please speak to your usual R&H contact if you wish to discuss any aspect of this note.

## NO FAULT DIVORCE - WHERE ARE WE NOW?

***Kate Landells of Withers LLP takes a look at the new 'no fault, divorce provisions'.***

It is now 6 months since the introduction of no fault divorce, and so it is an opportune moment to take a look at the impact of this important change.

### The Old Ways

From 1973 to 2022 divorce law had remained substantively unchanged. There was one ground for obtaining a divorce, which was that the marriage had irretrievably broken down. However, in order to prove that, it was necessary to rely on one of 5 facts. For those not prepared to agree to wait 2 years following their separation, or 5 years (without agreement), they were left with either alleging that their spouse had committed adultery or that their spouse had behaved in such a way that it was unreasonable for them to be expected to continue to live with them. They were required to provide details of the facts on which they sought rely.

The old law was fraught with problems: for most people it was financially and/or emotionally difficult to wait for 2 or 5 years. But blaming one another was the worst possible start to the process. Tini Owens famously brought the issues to the public's attention when her husband successfully defended her divorce petition arguing that she had not proved that he had behaved unreasonably, consigning her to remain married until 5 years passed from the date of their separation.

For those in same sex relationships, relying on adultery was not an option because of the legal definition requires adultery to be between a man and a woman.

The law was archaic and not fit for purpose and so many of us campaigned long and hard for change. So, what has changed?

### A New Way Forward

In order to make an application for divorce it is still the case that the marriage must have irretrievably broken down, but it is no longer necessary to prove any of the 5 facts – simply stating that the marriage has irretrievably broken down is sufficient. There are now very limited grounds to defending the divorce (that the marriage/civil partnership was invalid or the court does not have jurisdiction - eg because neither party lives here or has a substantial connection here).

It is also now possible for both parties to the marriage to make the application for divorce together – this can be an incredibly important step for both, and a significant part of the new 'no blame' culture in divorce. Whilst who initiates the divorce has never made a difference to the financial implications, or the appropriate arrangements for any children, it often made a difference to those involved, with the person on the receiving end of a divorce petition feeling attacked, and the person making the application feeling guilty. Removing the need for one person to make the application helps to set the right tone for the divorce proceedings.

### What's In a Word?

The language around divorce has changed – it is no longer a petition, decree nisi and decree absolute and instead an application, conditional order and final order. With the introduction of online divorce, many people are making their applications without reference to lawyers and so using more accessible language can help with understanding the process more easily. However, it is important to say that there are legal implications in connection with divorce and so doing so without advice can cause problems.

In practice, the law now accurately reflects the way that I have always approached the divorce element of family breakdown: once the very difficult decision to end a marriage has been made, the divorce process is really just a means to an end – it is the way in which the marriage is dissolved. It is the implications of that dissolution that require the time, attention, thought and emotional energy. Resolving the financial implications of separation requires a really good understanding of the family's financial resources and needs both now and in the future. Making arrangements for the children requires an absolute focus on what is best for those children and how their parents can help them navigate through the change in family dynamic with the least amount of emotional upheaval and stress. I have always encouraged my clients to focus their time and energy on their family's future - the practical implications of separation and not on the technicalities of divorce. Under the old law that could be difficult when the first step was to ask why the marriage had broken down and casting blame.

### Separating Together

There is an increased focus in the profession on, where appropriate, working with couples rather than individuals, with an emphasis on helping people stay on the same path towards a more amicable but separate future. At Withers, we led the way with *Uncouple*, a flexible service that avoids polarisation and uses mediation, neutral evaluation, third party professional input and arbitration to help families find the right solution for them.

### The Future

6 months on and I am delighted that the campaigning paid off and our divorce law works in modern society and allows people to focus on their future rather looking into their past and apportioning blame. We have not yet reached the conclusion of any of the new divorce applications yet – there is a minimum 20 week reflection period between the application and the conditional order, and a further 6 weeks and 1 day after the conditional order before you can apply for the final order. However, it is already clear that this is a change for the better.

So, now it is onto campaign for reform in other areas, for me the protection of the rights of cohabiting couples features highly on the agenda and I am hopeful that The House of Commons Report published this Summer, which recommends an opt-out cohabitation scheme (as proposed by the Law Commission in its 2007) will finally help to bring about much needed reform in this area. I would love to be writing about such a change in the very near future.

***Welcome to the third edition of US Tax Corner. In each quarterly edition of Tax Pulse, we take a key theme of US taxation and explore it in more detail.***

***All of our articles in US Tax Corner are written by our in-house UK/US tax team here at Rawlinson & Hunter. In this quarterly edition, we will take a brief look at the onerous US tax and informational reporting requirements.***

## Divided by a Common Language

As George Bernard Shaw noted, "England and America are two countries separated by a common language". Nevermore is this true than when we look under the bonnet (hood) of the tax systems. As we discussed in the First Edition, US citizens and green card holders living in the UK are still liable to US federal taxation regardless of their residence elsewhere. As we noted in the Second Edition of US Tax Corner, there are circumstances where the US taxes items that are tax-free in the UK.

However, where the UK and the US seek to tax an item of income or gain, there is a presumption that this is seen in the same way in both jurisdictions. Moreover, if assets are held in corporate or trust structures, or businesses are organised using partnership or corporate structures, it does not always follow that both jurisdictions will look at the matter in the same way. Over this and the next article, we will look at this issue from two perspectives – investment into the UK in this article and investment in the US in the next.

## If Everyone is Moving Forward Together, Then Success Takes Care of Itself

When setting up a business in the UK, there is often a discussion over the appropriate structure with self-employment, partnership, limited liability partnerships and limited companies being considered. From a US tax perspective, each of these structures is viewed differently and be subject to tax at different points in time. So, in the UK, we would naturally group the first three structures together for tax purposes since the individual's profits are taxed on them personally. The corporate option has two layers of taxation – being corporation tax and personal tax on extraction. There are relative advantages and disadvantages of each option, which is beyond the scope of this article.

In the US, the first two options are generally viewed in the same way as in the UK, though a Limited Liability Partnership ('LLP') is treated as a company for US tax purposes (owing to the fact that the entity is a body corporate for the purposes of the Limited Liability Partnership Act 2000). Depending on the ownership structure of the LLP, the divergent tax treatment can be avoided by electing to change the nature of the entity for US tax purposes by completing a Form 8832 Entity Classification Election. This will treat the LLP as a partnership for US tax purposes, which allows for uniform tax treatment between the UK and the US.

For a UK company, you can also file Form 8832 to look through the entity for US tax purposes. This option can be of assistance, though this depends on how profits are extracted and how much of these profits are extracted. The election will not be available to certain, typically larger, corporate entities such as UK public limited companies, though the flexibility here should not be overlooked as this can be a valuable tool in the armoury of the US person living outside the US.

### A Sledgehammer to Crack a Nut

For a US individual who wants to invest in public markets, care should be taken in the investment selection. Setting aside foreign exchange fluctuations, where a sterling profit can be exaggerated where there is little or no US dollar profit, there are potential penal consequences of ownership in Passive Foreign Investment Companies (PFICs). At their most basic, this would include non-US funds which are typically held to provide diversification in an investment portfolio. The PFIC legislation came into force in 1986 to discourage the use of foreign corporations to delay or reduce tax on investments, which ended up as a protectionist measure to provide a tax advantage to a US domestic fund over its non-US equivalent.

An investor's typical expectation may well be that a profit on the sale of an investment will be taxed as a long-term capital gain (if held for at least the requisite 12 month period), though with PFICs, this is not the case. If nothing is done, then the default treatment is that the profit element is taxed at the highest US federal income tax rate over the period of ownership and subjected to an interest charge (on the tax that should have been theoretically been paid if a sale event arose at the end of each year over the period of ownership). It is possible for shareholders to elect into a regime that requires a 'mark to market' of each investment each year or, in the seemingly rare event that the taxpayer can get the fund to provide the requisite information, they can make a Qualifying Electing Fund ('QEF') election to be taxed on the underlying income and gains of the fund investment.

The practical issue with the QEF and mark to market options is that this runs contrary to how the UK will tax the same investment, resulting in a mismatch between the UK and the US potentially leading to double taxation. The default rules leave a higher baked-in tax charge, which is well in excess of the 20% Capital Gains Tax rate that one looks for as a UK resident.

Whilst the US provides a solution to business arrangements, for a pure investment, there is no distinction between a non-US fund that rolls up income from one that does not. Where income is distributed year on year, one would expect that the capital appreciation of the fund investment would later be subject to Capital Gains Tax on a disposal. This can be achieved if UK residents invest in reporting funds, which have a requirement to distribute a defined amount of their income profits to investors or are deemed to have done so. This refinement to the UK rules on the investment in non-UK funds does provide a distinction between funds that roll up all of their profits and those which do not.

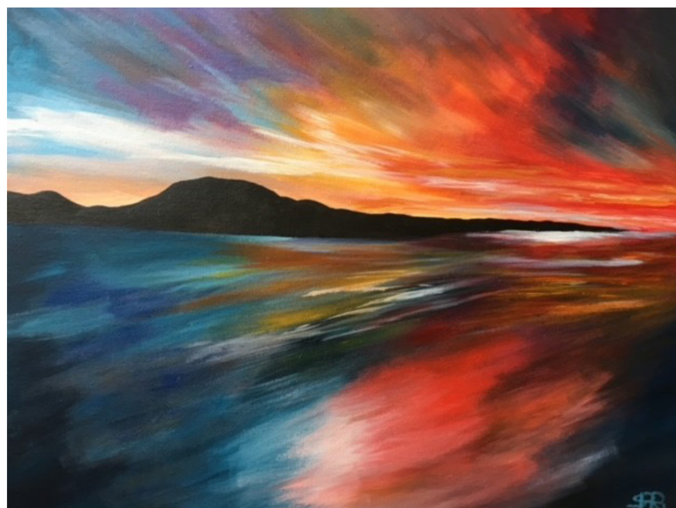
### I'll Scratch Your Back…

This is all very interesting, though surely the UK/US Double Taxation Agreement must deal with this? Unfortunately, one of the main misconceptions of a Double Taxation Agreement is that it is there to stop all double taxation between any two jurisdictions. In the Preface of the UK/US Agreement, it seeks to avoid double taxation and prevent fiscal evasion, so should not be treated as a panacea for all ills. 'Avoidance' will never reach the heights of prevention or elimination of double taxation so the broader question is whether any future revisions of domestic law or the Treaty can seek to bridge this gap. As the world gets more complex and more automated, the world of tax runs to catch up. In the meantime, there is no substitute for careful planning and consideration of fiscal leakage.

## AN ARTIST IN RESIDENCE!

For the last item in each edition of Tax Pulse, we like to move away from tax and financial issues and write about something with a human interest element to it. This time, we focus on Steph Bailhache, our marketing and events coordinator. Most of us need to work for a living, and many of us actually

enjoy what we do! But the most fortunate are those who are able to find a role which entails doing the things that they would do in their spare time, and getting paid for it! Steph is a perfect example.



With her responsibilities for organising the Firm's marketing events, a part of her role is to visit potential venues and scope them for suitability for drinks receptions, dinners and conferences. This requires her to undertake the distasteful task of assessing the ambience of locations and testing and sampling their menus, cocktails etc.! Flippancy aside, although this may sound like a dream job, it comes with a lot of responsibility because the Firm takes great pride in the style and success of our events and we very much appreciate the positive feedback which we get from clients and intermediaries.

The other key aspect to her role is her involvement in the presentational and artistic aspects of our professional publications, all of which are produced entirely in-house. We hope you may have noticed an improvement in the appearance and design of some of our publications, Tax Pulse included. In particular, in some of our publications we have moved away from typical cityscape scenery beloved of most accountancy firms in favour of a cleaner and more natural look. This is down to Steph's artistic flair.

Steph studied art throughout school to A level, but decided to continue painting as a personal interest rather than at university (where she completed a degree in English and creative writing). One of the reasons for this was to retain the free and fun element of art rather than having to work on particular pieces and subject matter which she wouldn't have chosen herself. She has always been naturally creative with a strong attention to detail and is given full freedom within her role at the Firm to put forward her creative ideas and to experiment with style and design, something which she appreciates and enjoys.

In these examples of Steph's more recent paintings, she has tried to focus on depth and vastness, a theme which has translated across to the publications, brochures and invitations which she has been working on. As she says herself:

'I think that depth in imagery is so important. I like images that inspire me, particularly images of the natural world and am very keen on a sunrise picture! In the cityscape painting I have included in this article, I wanted to portray the immensity and beauty of the sky and the sea against the buildings. I used a palette knife for this piece to get an abstract, textured look for the buildings, whilst the sky and water were done using various brushes to fuse the colours together. I much prefer landscapes and seascapes to building-dense cityscapes or portraits and really like images of abandoned buildings, or eerie ruins – although I haven't tried painting those yet! The deep, rich blue is probably my favourite colour to work with and is actually a similar colour to the

one in our logo that I use a lot in our publications!'

The Firm is well known for its many professional connections with the art world, so it is fitting that we can use the artistic talents of people like Steph to improve the creative quality of our own output!


**Tax Pulse was brought to you by:**

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| Editors: | Paul Huggins, Stephen Yates |
| Guest Writer: | Kate Landells, Withers LLP |
| Writers: | Kristina Volodeva, Jeremy Stein, Stephen Yates, Graeme Privett, Ian Gray, Steph Bailhache |
| Document Production: | Steph Bailhache |



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**London Office**
Rawlinson & Hunter LLP
Eighth Floor
6 New Street Square
New Fetter Lane
London EC4A 3AQ

**Surrey Office**
Rawlinson & Hunter LLP
Q3, The Square
Randalls Way
Leatherhead
Surrey KT22 7TW

**Tel: 0207 842 2000**
**www.rawlinson-hunter.com**