TAX CHAMBERS
15 OLD SQUARE

Harriet Brown
Tax Chambers, 15 Old Square,
Lincoln's Inn, London WC2A 3UE
T: (020)7242 2744 F: (020)7831 8095
taxchambers@15oldsquare.co.uk

April 2015:
A Private Client Tax Update

Harriet Brown
Barrister and Jersey Advocate
Tax Chambers, 15 Old Square

Harriet Brown
Tax Chambers, 15 Old Square,
Lincoln's Inn, London WC2A 3UE
T: (020)7242 2744 F: (020)7831 8095
taxchambers@15oldsquare.co.uk

Introduction

- Some interesting developments and changes impacting on the taxation of individuals at present (as always!)

- This talk deals with three key areas:
  - The EU Succession Regulation and the impact this will have, primarily, on will drafting
  - Budget 2015: key changes to private client tax in the Finance Act 2015 (and some key changes that aren't there)
  - Anti-avoidance provisions and private client tax: a quick update on where we are with the GAAR and an update on targeted anti-avoidance provisions

Harriet Brown
Tax Chambers, 15 Old Square,
Lincoln's Inn, London WC2A 3UE
T: (020)7242 2744 F: (020)7831 8095
taxchambers@15oldsquare.co.uk

TAX CHAMBERS
15 OLD SQUARE

EU Succession Regulation: What is It

- This has been "on the cards" for some time now – **Regulation EU 650/2012** of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession

- It is simply known as "**Brussels IV**"

- Its aim is stated as being:

… mutual recognition should be extended to fields that are not yet covered but are essential to everyday life, for example succession and wills, while taking into consideration Member States' legal systems, including public policy (ordre public), and national traditions in this area …

- In order to achieve the aim Brussels IV recognised the need to:
  - remove the obstacles to the free movement of persons who currently face difficulties in asserting their rights in the context of a succession having cross-border implications;
  - citizens must be able to organise their succession in advance;
  - the rights of heirs and legatees, of other persons close to the deceased and of creditors of the succession must be effectively guaranteed;
  - The scope of Brussels IV should include all civil-law aspects of succession to the estate of a deceased person, namely all forms of transfer of assets, rights and obligations by reason of death, whether by way of a voluntary transfer under a disposition of property upon death or a transfer through intestate succession
  - Brussels IV should not apply to revenue matters or to administrative matters of a public-law nature. It therefore remains for national law to determine how taxes are calculated and paid

Harriet Brown
Tax Chambers, 15 Old Square,
Lincoln's Inn, London WC2A 3UE
T: (020)7242 2744 F: (020)7831 8095
taxchambers@15oldsquare.co.uk

EU Succession Regulation: What is It (Cont'd)

- Comes into force: **17 August 2015** (see Article 84 of Brussels IV)
- Adopted by all the EU Member States except
  - Denmark
  - UK
  - Ireland
- The UK and Ireland may, however, adopt Brussels IV at a later date

Harriet Brown
Tax Chambers, 15 Old Square,
Lincoln's Inn, London WC2A 3UE
T: (020)7242 2744 F: (020)7831 8095
taxchambers@15oldsquare.co.uk

EU Succession Regulation: The Problem Addressed

- Different EU member states have different rules determining which law applies to the succession of a deceased's estate

- Methods commonly adopted:
  - nationality (Germany)
  - habitual residence (France; but sometimes for a minimum period: Netherlands five years)
  - common law domicile (England, Ireland, Malta)
  - *lex rei sitae* to immovable property (immobiles)

- The last of these can be particularly problematic, e.g.:
  - an Englishman buys a house in France and succession to the property is governed by the forced heirship provisions of the Code Civil.
  - Thus the children of the deceased have a claim to up to three quarters of the estate—a claim which they cannot renounce during the parent's lifetime.
  - The Englishman's French estate (the French situate immovables) will be governed by French law, even though he is resident in England, and will be administered subject to different rules to the rest of his (presumably, English) situate estate

Harriet Brown
Tax Chambers, 15 Old Square,
Lincoln's Inn, London WC2A 3UE
T: (020)7242 2744 F: (020)7831 8095
taxchambers@15oldsquare.co.uk

EU Succession Regulation: The Provisions

- Key provisions for will drafters are:
  - Article 20 (universal application)
  - Articles 21 – 23
  - Article 27 (formal validity of wills)
  - Article 62 et seq (creation of the European Succession Certificate ("**ESC**")

- Article 20 provides:

Any law specified by this Regulation shall be applied whether or not it is the law of a Member State

- Article 21 provides:

1. Unless otherwise provided for in this Regulation, the law applicable to the succession as a whole shall be the law of the State in which the deceased had his habitual residence at the time of death.

2. Where, by way of exception, it is clear from all the circumstances of the case that, at the time of death, the deceased was manifestly more closely connected with a State other than the State whose law would be applicable under paragraph 1, the law applicable to the succession shall be the law of that other State.

- Thus Article 21 gives a default provision – habitual residence

Harriet Brown
Tax Chambers, 15 Old Square,
Lincoln's Inn, London WC2A 3UE
T: (020)7242 2744 F: (020)7831 8095
taxchambers@15oldsquare.co.uk

EU Succession Regulation: The Provisions (Cont'd)

- Article 22 provides:

1. A person may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of death. A person possessing multiple nationalities may choose the law of any of the States whose nationality he possesses at the time of making the choice or at the time of death.

2. The choice shall be made expressly in a declaration in the form of a disposition of property upon death or shall be demonstrated by the terms of such a disposition.

3. The substantive validity of the act whereby the choice of law was made shall be governed by the chosen law.

4. Any modification or revocation of the choice of law shall meet the requirements as to form for the modification or revocation of a disposition of property upon death.

- Article 22 provides, therefore, for a limited choice of law. A testator can by will nominate the law of his nationality (or one of them, if he has more than one nationality) as the law governing his succession.

- Even though the Regulation only comes into force in 2015, it is already possible for a testator to make a choice of law under Article 83.

- Thus those drafting English wills should already consider including an English choice of law clause as a matter of regular practice, even in cases with no current international element, because of the possibility of the testator moving abroad in the future.

Harriet Brown
Tax Chambers, 15 Old Square,
Lincoln's Inn, London WC2A 3UE
T: (020)7242 2744 F: (020)7831 8095
taxchambers@15oldsquare.co.uk

EU Succession Regulation: The Provisions (Cont'd)

- Article 23 provides:

1. The law determined pursuant to Article 21 or Article 22 shall govern the succession as a whole.

2. That law shall govern in particular:

(a) the causes, time and place of the opening of the succession;

(b) the determination of the beneficiaries, of their respective shares and of the obligations which may be imposed on them by the deceased, and the determination of other succession rights, including the succession rights of the surviving spouse or partner;

(c) the capacity to inherit;

(d) disinheritance and disqualification by conduct;

(e) the transfer to the heirs and, as the case may be, to the legatees of the assets, rights and obligations forming part of the estate, including the conditions and effects of the acceptance or waiver of the succession or of a legacy;

(f) the powers of the heirs, the executors of the wills and other administrators of the estate, in particular as regards the sale of property and the payment of creditors, without prejudice to the powers referred to in Article 29(2) and (3);

(g) liability for the debts under the succession;

(h) the disposable part of the estate, the reserved shares and other restrictions on the disposal of property upon death as well as claims which persons close to the deceased may have against the estate or the heirs;

(i) any obligation to restore or account for gifts, advancements or legacies when determining the shares of the different beneficiaries; and

(j) the sharing-out of the estate.

- Later provisions exclude certain matters from being determined by the law selected, or assigned under Article 21 (see, for example, Article 32 on commorientes)

Harriet Brown
Tax Chambers, 15 Old Square,
Lincoln's Inn, London WC2A 3UE
T: (020)7242 2744 F: (020)7831 8095
taxchambers@15oldsquare.co.uk

EU Succession Regulation: What to do Now

- The fact that the UK has not signed up to Brussels IV is a one way street:
  - Foreign nationals cannot rely on it in the UK
  - However, an English national could potentially rely on it in other Member States, and consequently, it is important for English lawyers to be aware of it and its application

- Brussels IV has no effect for tax purposes: whether or not something is taxable, and the extent to which it is taxable will still be determined by the national law

- It therefore makes sense now to include a choice of law clause in any wills currently being drafted, and to review existing wills to see if a choice of law clause could usefully be included (these should be valid now, provided they are made in accordance with Brussels IV – see Article 83(2))

- This is even useful in the context of an individual habitually resident in England and Wales (who has non-UK but EU situate property within their estate) because the inclusion of a choice of law clause in the will could reduce the possibility of problems arising from renvoi

- Requirements for a valid choice of law clause:
  - made expressly in a declaration in the form of a disposition of property upon death or
  - demonstrated by the terms of such a disposition

Harriet Brown
Tax Chambers, 15 Old Square,
Lincoln's Inn, London WC2A 3UE
T: (020)7242 2744 F: (020)7831 8095
taxchambers@15oldsquare.co.uk

TAX CHAMBERS
15 OLD SQUARE

Finance Act 2015: Introduction

- The Finance Act 2015 is an "election year" Finance Act, and consequently, contains fewer major provisions than Finance Acts from other years

- Received Royal Assent on Thursday 26 March 2015 following two days of parliamentary scrutiny of the 300+ pages of legislation

- The key areas for private client practitioners are:
  - Capital gains tax on non-residents
  - Changes to the principal private residents relief

- Key matters not included in FA 2015:
  - Social venture capital trusts
  - Amendments to inheritance tax rules in relation to multiple trusts

Harriet Brown
Tax Chambers, 15 Old Square,
Lincoln's Inn, London WC2A 3UE
T: (020)7242 2744 F: (020)7831 8095
taxchambers@15oldsquare.co.uk

Finance Act 2015: Capital Gains Tax On Non-Residents

- This change was well publicised
- Changes are found in FA 2015, section 37 and Schedule 7
- Non UK residents (including trustees, personal representatives, certain companies, as well as individuals – and including all of these categories as partners in a partnership/LLP) making disposals of UK residential property on or after 6 April 2015, will be subject to UK CGT on gains accruing after this date
- Be aware – there are significant additions to the previous version of the Bill published in December 2014

TAX CHAMBERS
15 OLD SQUARE

Harriet Brown
Tax Chambers, 15 Old Square,
Lincoln's Inn, London WC2A 3UE
T: (020)7242 2744 F: (020)7831 8095
taxchambers@15oldsquare.co.uk

Finance Act 2015: Principal Private Residence Relief

- Changes are found in section 39 and Schedule 9

- Schedule 9: inserts new sections TCGA, section 222(6A), 222A, 222B, 222C, 223A

- Currently, an individual (and in certain circumstances trustees and personal representatives) is entitled to relief from CGT on the sale of his only or main residence. Where an individual has lived in the property from the date of purchase to the date of sale, any gain arising on the sale is covered by PPR and fully exempt from CGT. The last 18 months of ownership of the property are covered by the relief, even where the individual has not actually lived in the property during that period. Taxpayers with more than one residence are able to elect to choose which residence is their main residence for PPR and this will continue.

- FA 2015 introduces new rules for situations where the property is located in a different 'territory' to that in which the taxpayer is resident. The new rule restrict the availability of PPR for both non-UK residents with property in the UK and UK residents with property located in another country.

- From 6 April 2015 any residence owned by a UK or non-UK resident will only be capable of qualifying for PPR if it is located in a territory in which the individual, their spouse or civil partner is resident or, where it is located in a different territory, the individual meets the "day count test" in relation to the residence

TAX CHAMBERS
15 OLD SQUARE

Harriet Brown
Tax Chambers, 15 Old Square,
Lincoln's Inn, London WC2A 3UE
T: (020)7242 2744 F: (020)7831 8095
taxchambers@15oldsquare.co.uk

Finance Act 2015: Principal Private Residence Relief (Cont'd)

- Determining residence:
  - the Statutory Residence Test (SRT) will apply in the UK.
  - For other "territories" an individual will be treated as resident there in a tax year if either:
    - they are liable to tax in that territory for more than half the tax year by virtue of their residence or domicile; or
    - by applying the same tests of the UK SRT but by substituting references to the other territory for references to the UK
- The day count test will be met if
  - the individual or their spouse/civil partner spend at least 90 days in the property in the tax year
  - a day will have been spent in the property where the individual is present in the property at the end of the day
  - Where the individual or their spouse/civil partner has an interest in more than one dwelling in the territory in which the property is located, days spent in those other dwellings ("qualifying houses") can be aggregated with days spent in the property in question to determine whether the 90 day threshold is met.
- Individuals who have occupied a property as a main residence for all but the last 18 months will still be able to qualify for full relief even if they dispose of the property whilst non-UK resident

TAX CHAMBERS
15 OLD SQUARE

Harriet Brown
Tax Chambers, 15 Old Square,
Lincoln's Inn, London WC2A 3UE
T: (020)7242 2744 F: (020)7831 8095
taxchambers@15oldsquare.co.uk

Finance Act 2015: Principal Private Residence Relief - Summary

- UK residents should determine PPR relief under the old rules in relation to UK homes – no change

- UK residents with a second home must now satisfy the 90-day rule (day count test) in relation to that second home to claim PPR

- Individuals who are not UK resident, but wish to meet the day count test in relation to a UK property will need to exercise care to ensure that they do not impact their residence status under the SRT

- PPR may be available in relation to a NRCGT charge, but the claim for PPR must be made in the NRCGT return and cannot subsequently be varied

Harriet Brown
Tax Chambers, 15 Old Square,
Lincoln's Inn, London WC2A 3UE
T: (020)7242 2744 F: (020)7831 8095
taxchambers@15oldsquare.co.uk

Finance Act 2015 - Matters not Included: Introduction

- Since it is an election year, the Finance Act is shorter than it might otherwise have been, and does not include certain matters that had been publicised as being intended to be included in the Finance Act

- Two key issues that were inspected to be included, but were not, are:
  - Social venture capital trusts
  - Changes to the treatment of multiple trusts

- Other matters not covered by Finance Act 2015:
  - a new tax exemption for travel expenses of members of local authorities (announced July 2014);
  - a new statutory exemption from income tax for trivial benefits in kind, implementing a recommendation of the Office of Tax Simplification's review of employee benefits and expenses (announced at Budget 2014);
  - changes to scheme rules for the Enterprise Investment Scheme and Venture Capital Trusts (announced at Budget 2015) - on which draft legislation is being published today and which are subject to EU State aid approval

TAX CHAMBERS
15 OLD SQUARE

Harriet Brown
Tax Chambers, 15 Old Square,
Lincoln's Inn, London WC2A 3UE
T: (020)7242 2744 F: (020)7831 8095
taxchambers@15oldsquare.co.uk

FINANCE ACT 2015 - MATTERS NOT INCLUDED: SVCT

- In the Budget the Government said:

The aim of the social venture capital trust is to increase participation in social investment among retail investors who want to invest smaller amounts than are generally needed for direct investment, and benefit a variety of organisations

- Based on the existing VCT scheme but to allow investment of smaller amounts

- The SCVT scheme will mirror the existing venture capital trust schemes for non-social investments, and investors will not pay tax on dividends received from a social VCT

- Outline of VCTs:
  - VCTs pool their investors' money to invest in a portfolio of fledgeling enterprises
  - Relatively high risk, but offer tax relief for investors of up to 30%
  - Profits are usually paid as tax-free dividends
  - Investors can commit up to £200,000 a year
  - Venture capital trust managers usually take a hands-on approach to help the investee businesses to grow

- The 30% rate of income tax relief will be subject to clearance from the EU in relation to state aid rules (aimed at preventing unfair market advantages through taxpayer-funded resources)

Harriet Brown
Tax Chambers, 15 Old Square,
Lincoln's Inn, London WC2A 3UE
T: (020)7242 2744 F: (020)7831 8095
taxchambers@15oldsquare.co.uk

Finance Act 2015 - Matters not Included: "Simplifying Charges on Trusts" and Targeted Avoidance Rules for Multiple Trusts

- There have been several consultations on the use of multiple trusts in inheritance tax avoidance (often pilot trusts to extend the NRB applicable to property held in trust)

- Draft Clauses were published in December 2014, but have not been included in FA 2015

- The document publishing the draft clauses says:

The measure will simplify the calculation of trust charges by removing the need to include non-relevant property in the calculation. It also introduces new rules about adding property to trusts on the same day to protect inheritance tax revenues from the use of multiple trusts. The measure also includes changes in the relevant property trust legislation to provide more certainty and to ease the effect of the legislation

- It continued:

This measure will reform IHT for relevant property trusts and make the tax system fairer by removing the advantage under the current rules that enables individuals to create multiple trusts and avoid IHT through the use of multiple nil rate bands

Harriet Brown
Tax Chambers, 15 Old Square,
Lincoln's Inn, London WC2A 3UE
T: (020)7242 2744 F: (020)7831 8095
taxchambers@15oldsquare.co.uk

TAX CHAMBERS
15 OLD SQUARE

Finance Act 2015 - Matters not Included: "Simplifying Charges on Trusts" and Targeted Avoidance Rules for Multiple Trusts (Cont'd)

- The draft Clauses were subject to a detailed description of their commencement provisions:

The measure will apply to all charges arising on or after the proposed commencement date of 6 April 2015 in respect of relevant property trusts created on or after the publication of draft legislation on 10 December 2014. To prevent forestalling, it will also apply to relevant property trusts created before 10 December 2014 where there are additions made to more than one trust on the same day. The new rules which ignore non relevant property in the calculation of the rate of charge on a 10 year anniversary will apply to all charges arising on or after 6 April 2015 regardless of when the trust was created.

The new rule about additions to existing trusts will not apply to a will executed before 10 December 2014 but this exclusion will be limited to deaths before 6 April 2016. This is to allow a period of time for those affected to change their will and avoid unwanted tax consequences.

With regard to the changes being made to other areas of the relevant property trust legislation, the amendments will apply to all charges arising on or after the date that Finance Bill 2015 receives Royal Assent except for those relating to appointments for the benefit of the deceased's surviving partner (section 144 of the Inheritance Tax Act 1984 (IHTA)) which will apply to all deaths on or after 10 December 2014.

- These time limits seem unlikely now to apply because the draft clauses have not been included in FA 2015

- However, irrespective of which party/parties form a government after the general election, these proposals seem unlikely to go away altogether (though obviously they may be enacted in a different form)

- Consequently have a quick look at the provisions currently proposed

TAX CHAMBERS
15 OLD SQUARE

Harriet Brown
Tax Chambers, 15 Old Square,
Lincoln's Inn, London WC2A 3UE
T: (020)7242 2744 F: (020)7831 8095
taxchambers@15oldsquare.co.uk

Finance Act 2015 - Matters not Included: "Simplifying Charges on Trusts" and Targeted Avoidance Rules for Multiple Trusts (Cont'd)

- Proposed section 62A - introduces a rule to ensure that where property is added to two or more settlements on the same day and after the commencement of those settlements, the value of the added property together with the value of property settled at the date of commencement (that is not already in a related settlement) will be brought into account in calculating:
  - the rate of tax for the purposes of ten year charges under section 66
  - for exit charges before the first ten-year anniversary under section 68
  - for exit charges between anniversaries under section 69 for and for the charge on 18/25 trusts under section 71F

- Section 79: the intention was to amend so that the requirement that a claim must be made and the property designated before the ten year charge was removed and instead allowing trustees to make a claim for exemption within two years of the ten year charge arising.

- Section 80: proposed to be amended so that "a qualifying interest in possession" is substituted for "an interest in possession" so that where one party to a couple succeeds to a life interest to which their spouse or civil partner was previously entitled during the latter's lifetime and that interest is not a transitional serial interest section 80 will apply at that time (because neither spouse would then have a qualifying interest in possession) with the result that the settled property would be treated as being comprised in a settlement and therefore subject to the relevant property charges.

- Section 144: the proposal was to amend so that the provisions of section 65(4) (which prevent a charge to tax arising in the first three months after the settlement commenced, or within a ten-year anniversary) would not apply to appointments out of property settled by will. The aim was to ensure that where an appointment is made within three months of the date of death in favour of the deceased's surviving spouse or civil partner, it can be read back into the will and exemption under section 18 can be given.

Harriet Brown
Tax Chambers, 15 Old Square,
Lincoln's Inn, London WC2A 3UE
T: (020)7242 2744 F: (020)7831 8095
taxchambers@15oldsquare.co.uk

GAAR: Changes to The GAAR Guidance

- A brief introduction to/reminder of GAAR:

The primary policy objective of the GAAR is to deter taxpayers from entering into abusive arrangements, and to deter would-be promoters from promoting such arrangements. There may be tax avoidance arrangements that are challenged by HMRC using other parts of the tax code, but if they are not abusive they are not within the scope of the GAAR

- Found in FA 2013

- The GAAR applies for the purpose of counteracting tax advantages arising from tax arrangements that are abusive

- "Tax arrangements" are arrangements which, having regard to all the circumstances, it would be reasonable to conclude that the obtaining of a tax advantage was the main purpose, or one of the main purposes, of the arrangements.

- Tax arrangements are "abusive" if they are arrangements the entering into or carrying out of which cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions, having regard to all the circumstances including—
  - whether the substantive results of the arrangements are consistent with any principles on which those provisions are based (whether express or implied) and the policy objectives of those provisions,
  - whether the means of achieving those results involves one or more contrived or abnormal steps, and
  - whether the arrangements are intended to exploit any shortcomings in those provisions

TAX CHAMBERS
15 OLD SQUARE

Harriet Brown
Tax Chambers, 15 Old Square,
Lincoln's Inn, London WC2A 3UE
T: (020)7242 2744 F: (020)7831 8095
taxchambers@15oldsquare.co.uk

GAAR: Changes to The GAAR Guidance (Introduction)

- Legislative examples of things which are likely to be abusive:
  - the arrangements result in an amount of income, profits or gains for tax purposes that is significantly less than the amount for economic purposes,
  - the arrangements result in deductions or losses of an amount for tax purposes that is significantly greater than the amount for economic purposes, and
  - the arrangements result in a claim for the repayment or crediting of tax (including foreign tax) that has not been, and is unlikely to be, paid, but in each case only if it is reasonable to assume that such a result was not the anticipated result when the relevant tax provisions were enacted.

- Legislative examples of things which are likely not to be abusive: the fact that tax arrangements accord with established practice, and HMRC had, at the time the arrangements were entered into, indicated its acceptance of that practice, is an example of something which might indicate that the arrangements are not abusive.

- Finance Act 2013, section 211 provides:

  In determining any issue in connection with the general anti-abuse rule, a court or tribunal must take into account—

  (a) HMRC's guidance about the general anti-abuse rule that was approved by the GAAR Advisory Panel at the time the tax arrangements were entered into, and

  (b) any opinion of the GAAR Advisory Panel about the arrangements

- Thus HMRC's guidance will need to be considered in detail by anyone considering the GAAR

- Guidance can be found at: https://www.gov.uk/government/publications/tax-avoidance-general-anti-abuse-rules

TAX CHAMBERS
15 OLD SQUARE

Harriet Brown
Tax Chambers, 15 Old Square,
Lincoln's Inn, London WC2A 3UE
T: (020)7242 2744 F: (020)7831 8095
taxchambers@15oldsquare.co.uk

GAAR: Changes to The GAAR Guidance (Parts A – C)

- All sections of the GAAR Guidance were updated with effect from 30 January 2015

- While many of the changes are not substantive, there are some useful (and some not so useful) clarifications in the additions

- Part B:
  - This part of the GAAR Guidance is entitled "Summary of what the GAAR is designed to achieve and how it operates to achieve it"
  - There is a useful addition to paragraph B6.1, where HMRC now explain: "*In practice HMRC expect to argue GAAR where it is appropriate to do so, at the same time as arguing other technical challenges that may be available as alternatives*"
  - Paragraph B9.2 now reminds us that the GAAR applies to NICs with effect from 13 March 2014

TAX CHAMBERS
15 OLD SQUARE

Harriet Brown
Tax Chambers, 15 Old Square,
Lincoln's Inn, London WC2A 3UE
T: (020)7242 2744 F: (020)7831 8095
taxchambers@15oldsquare.co.uk

GAAR: Changes to The GAAR Guidance (Parts D and E)

- Part D contains an extensive number of examples of behaviours that HMRC consider both to be abusive, and those that they will consider not to be abusive

- There are, unfortunately, few additions to Part D:
  - A new example D25A has been added: sets out an example of when arrangements designed to circumnavigate the provisions of ITEPA, Part 7A (Disguised remuneration) will be abusive
  - The example on partnerships at paragraph D36 has been deleted. In the Notes on the amendments, it is stated: *Example D36 'Partnership and bare trust over property' in the 15 April 2013 guidance is deleted from the amended guidance as unnecessary. Rule changes blocked this type of scheme although the arrangement is still considered abusive and the principles in the example illustrates valid, however these are adequately demonstrated by another example 'Subsales'*

- Part E contains guidance on procedure. It is not subject to approval of the GAAR Advisory Panel and, therefore, will not be something that the Court must consider under FA, section 211

- Amendments to Part E:
  - Paragraph E3.5.5 has been amended to clarify the function of the Advisory Panel, now saying: *The Advisory Panel is not a fact-finding body. The Procedural Schedule will work best if HMRC and the taxpayer give the Advisory Panel the information set out in Sections 3 and 4 of the Advisory Panel's guidance on procedures for dealing with referred cases (without unnecessarily voluminous evidence to back up their case) and disclose their views about the proposed counteraction as quickly as possible and are able to respond to each other's views.*
  - Paragraph E6.12 inserts a whole new section that deals with the procedure for NICs