Shares and Assets Valuation Fiscal Forum – 4 November 2016

HM Treasury, 1 Horse Guards Road, London

List of attendees

Sarah Kelsey – SAV

Mike Fowler – SAV

Paul Simpson – SAV

Barry Roland – SAV

Tony Spindler – SAV

David Tatum – SAV

Dee Atkin – SAV

Shona Crump – SAV

Kate Green – SAV

Judith Emery-Sisson – SAV

Tracey Wilson – SAV

Alan Garrod – Pett Franklin

Amar Johal – Grant Thornton

Ann Daly - BDO

Ashley Higgs – Smith & Williamson

Charles Sword - PWC

David Hadley – Mercer & Hole

David McKeon – Charnwood Accountants

Errol Danziger – Danziger PLC

James Lindon - Orrick

James Porter - KPMG

John Rugman – Smith & Williamson

Kirti Seth – Grant Thornton

Mairi Granville-George – Osborne Clarke

Mandy Neale - KPMG

Mark Collins

Mike Scoltock – Greenback Alan accountants

Nigel Eastaway – Macintyre Hudson

Paul Sinclair - PWC

Rachel Turrell - BDO

Ralph Knight – Valuation Solutions

Ritchie Tout - Mazars

Robert Bell – Smith & Williamson

Robin Jackman - Deloitte

Roger Burton - Deloitte

Sarah E Howard - BDO

Simon Leney – Cripps

Steve Lygo – Parmentier Arthur Valuation Services Ltd

Stuart Gilham – Ernst & Young

William Franklin – Pett Franklin

Apologies

Angela Belsten - Ernst & Young

Becky Mitchell - RM2

Gabbi Stopp - ifs Proshare

Graham Nuttall - Field Fisher

Ian Logan - PWC

Ian Murphie - Share Plan Partners

Jenny Nelder - Bruce Sutherland

John Nolan - Schroders/Cipp

Kenton May - Burgess Hodgson

Lynette Bober - ICAEW

Mahesh Varia - Travers Smith

Mark Gearing - Field Fisher

Nick Stobbs - Abbey Tax

Nick Wallis - Smith & Williamson

Pavan Singh - KPMG

Phil Waller - Mazars

Simon Jennings - Rawlinson & Hunter

Tarlochan Lall - Monckton Chambers

Travis Taylor - Navigant Consultants

Vinesh Punjani - Abbey Tax

1. Welcome

Sarah Kelsey (SK) introduced herself as the new Deputy Director with responsibility for SAV and explained the recent internal reorganisation within HMRC.

2. SAV workstate and digitisation

Barry Roland (BR) said that the 2015-16 year had been a good one for SAV. SAV received around 14,000 new valuations and achieved a yield in excess of £150m. This year so far, SAV had received around 8,000 new valuations and expects a yield of around £150m by the end of March 2017.

Last year SAV exceeded both the 15 day and 40 day post targets (dealing with around 80% and 98% of the post within 15 and 40 days respectively) and for this year so far, the figures are slightly better (82% and 98% respectively).

BR explained that SAV was targeting post (dealing with the peaks and troughs), making more use of email and continuing proactive case working (with early contact with agents by telephone). SAV has also rolled out the Digital Mail Service (where external post coming into HMRC is scanned centrally and then sent electronically to SAV) and in late October fully electronic digital caseworking was introduced across SAV. All new cases are now set up in electronic file form, not paper. There have been issues recalling old files from off-site file storage, but this should become less of a problem with the use of electronic files.

On the staffing front, BR added that some experienced staff are due to retire. In order to tackle SAV's age profile, three recent graduates were recruited last year, and another two started this autumn.

3. ITEPA PTVCs

Tony Spindler (TS) said that the Employment Income (ITEPA) Post Transaction Valuation Check facility was withdrawn, with effect from 1 April 2016. TS explained that this had been a business decision, balancing risk and resource. SAV was accepting 85-90% of these valuations as returned and the reports were often very complicated, taking a long time to go through, before being ultimately accepted. Withdrawing this service allows valuers more time to concentrate on other work. TS added that working with external representative bodies, SAV plans to produce better guidance and consider the possibility of running workshops.

TS mentioned that SAV continues to look at its processes, for example the possible self-certification of EMI valuations. However, SAV is mindful of the

issues raised with the withdrawal of the ITEPA PTVC and will seek external consultation before looking to make any process changes.

TS said that various groups have recently visited SAV in Nottingham to have an overview of SAV structure, processes and so on and have a general discussion. TS offered the opportunity to anyone else who might be interested - if you are interested you can contact him on tony.spindler@hmrc.gsi.gov.uk

4. Litigation Update

Mike Fowler (MF) said that SAV was pushing forward litigation cases and that a particular focus has been trying to speed up sending Gift of Shares cases to tribunal. These are cases where shares have been issued at a low price, then floated on AIM or the Channel Islands Stock Exchange at a much higher price. Shares are then gifted to a charity at this higher price and Gift Aid relief claimed. HMRC is of the view that the claimed value is too high.

Most of these gifts took place over ten years ago, over various dates and concern a number of companies and taxpayers. HMRC's Counter Avoidance Directorate are arranging evening forums where taxpayers are updated and given the opportunity to ask questions. They are given a period of time to provide certain information and then closure notices are issued using HMRC's best estimate of value. HMRC is planning to take each of these cases to litigation if necessary. Two cases have been to tribunal so far. In one judgement is still awaited. In the other the taxpayer claimed a value of £1 per share, his valuer proposed a value of 88-93p per share and HMRC's valuer proposed 25-30p per share. The tribunal judgement figure was 35p per share and this case is now concluded. The full judgement is here.

BR added that a number of taxpayers are settling at SAV's values without going to tribunal.

The JD Designs case has been mentioned before. After several preparatory hearings the taxpayer's appeal against the First Tier Tribunal's 2013 judgement was heard substantively before the Upper Tier Tribunal (UTT) in May 2016. In September 2016 the UTT agreed with the FTT and ruled that the company had no contractual rights over Miss Dyer's trademarks and services and that the shares were worthless when the loan was converted to shares in October 2007. This decision is not yet final.

MF drew attention to the fact that the UTT criticised the use of the term 'de facto contract' in the statement of agreed facts saying there was no such concept as a 'de facto contract' in English law. MF felt there was a learning point here in that parties should be very careful about the wording in agreed statements of facts.

Looking to the future MF said that a capital loss generation scheme involving the valuation of shares and options is due to be heard in February. It is also hoped

that cases involving the valuation of goodwill in trade related properties and medical practitioners will be heard later in 2017.

In response to a question MF and BR explained that SAV accepts that there could be Goodwill in, say, a private GPs practice, offering medical services and employing others on fixed contracts. However, for sole medical practitioners SAV have seen no convincing evidence of market sales and, in the absence of such evidence, take the view that any Goodwill is personal and cannot be transferred.

It was agreed that SAV will email notification of litigation decisions to Fiscal Forum members once they are final and in the public domain.

MF explained that SAV have a panel of independent valuers which they use when it is felt appropriate to do so. There are currently 13 independent valuers on the panel which is due to be refreshed in 2017. Early in 2017 HMRC will be advertising for valuers to join the panel and MF encouraged those present to consider applying.

5. Penalties

BR discussed penalties under schedule 24 of the Finance Act 2007. BR said the application of penalties can be a difficult area as there are no exact figures in valuation and there are a range of legitimate issues. However, he added that sometimes figures stray out of this range. The question is whether a change of value occurs because of genuine valuation debate to reach a reasonable negotiated value or due to concealment.

BR explained that if reasonable care is taken by taxpayers, no penalty will be applied. However, ‘reasonable care’ does take account of the particular person’s abilities and circumstances. Also using an advisor does not mean that the individual gives up their responsibility to be prudent and reasonable. Penalties will be applied for careless behaviour.

BR added that penalties are also applied for deliberately including incorrect figures, but not concealing them and for deliberately including incorrect figures and concealing them.

BR then gave three examples of recent penalties: -

a) In an Inheritance Tax case where Business Relief was claimed, a company held a substantial amount in cash. The agent and executors made no allowance for excepted assets, although they had held clear discussions on what figure to include for excepted assets, before ultimately including nothing to see if this got through. The executors and agents were issued with a penalty.

b) The Tax Assurance Commissioners report published in July 2016 details a penalty given to a large company taxpayer which had employed an agent who had submitted incorrect figures. This is an example of careless behaviour as this was a sophisticated taxpayer who should have realised the figures were incorrect.
c) In an on-going chattels case, various high value assets were either excluded or mis-described in a case of deliberate concealment.

6. Professionalism CPD

Paul Simpson (PS) said that SAV considered professional CPD and accreditation to be very important, adding that this was likely to become a factor for the wider profession given the push in the US for accreditation for FV work. SAV is closely associated with RICS, sitting on the Business Valuation sub-board and helping with guidance and training. SAV's new entrants must follow a nine month training course, pass an exam and successfully complete a two year consolidation period overseen by RICS. After the two years, the valuer, if successful, will then become an associate member of RICS.

More senior valuers will follow the related Assessment of Professional Competence for the Business/Intangibles pathway to become a chartered member of RICS.

SAV organises internal and external CPD events to develop staff, increase knowledge and maintain professional standards. RICS require 20 hours of CPD a year; HMRC requires 36 hours. Valuers from outside firms have delivered CPD sessions to SAV staff on various topics over the last few years and SAV and hopefully the presenters have found this useful. To discuss leading a session, please contact either kevin.beard@hmrc.gsi.gov.uk or barry.roland@hmrc.gsi.gov.uk

7. AOB

PS said that this year for the first, the items for the Fiscal Forum agenda had come solely from SAV as none had been received from other attendees. PS encouraged attendees to think about potential items for next year.

A question was asked on the reservation of benefit and pre-owned assets chattels rental. TS said this issue had recently been discussed at the Chattels Valuation Fiscal Forum and SAV had concerns that the historically used rental rate for chattels of around 1% might be underestimated. SAV plans to work with the chattels community to consider this further.

SAV was asked whether there had been any change of policy on deductions for contingent CGT on the sale of company property. TS confirmed there was no change of SAV policy.

SAV was also asked whether in the future agents would be able to scan in their letters and documents and send electronically direct to SAV, instead of sending paper to HMRC, which is then scanned and sent through to SAV. BR thought this was quite likely in the future. He also added that a lot of SAV correspondence is now by email, with a reduced number of actual letters.

TS commented that some attendees had been unaware of the existence of the Employment Related Securities Forum which meets annually. If valuers would like to attend, please contact Tracey Wilson – tracey.wilson@hmrc.gsi.gov.uk