

Association of Accounting
Technicians response to the
Office of Tax Simplification
Discussion Paper:
“Sole Enterprise Protected
Assets – A discussion
document”

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1. Introduction

- 1.1. The Association of Accounting Technicians (AAT) is pleased to have the opportunity to respond to the Office of Tax Simplification’s (OTS) discussion paper “Sole Enterprise Protected Assets - A discussion paper” published 18 July 2016 (the paper).
- 1.2. AAT is submitting this response on behalf of our membership and from the wider public benefit of achieving sound and effective administration of taxes.
- 1.3. AAT has focussed on the operational perspective, entering into comment in order to add value or highlight aspects that need to be considered further.
- 1.4. In order to inform the response preparation process a handpicked group of 10 of AAT’s senior licensed accountants and thought leaders met with the Tax Director of the OTS in August to discuss and consider the contents of the paper in a round-table environment.
- 1.5. The outcomes arising from the round-table event (the event) have been extensively used to inform the production of this response.
- 1.6. AAT thanks all of those involved in the event, especially the Tax Director of the OTS, and looks forward to the publication of its October Conclusion Document.

2. Executive summary

- 2.1. AAT acknowledges the OTS’s findings arising out of its review of the Small Companies Taxation review that “...the most common reason given by small companies for incorporation was for limited liability rather than tax reasons” (page 1, the paper).
- 2.2. This acknowledgement, positions the paper clearly away from the tax motivated incorporation argument that is widely postulated.¹
- 2.3. It is, also, pleasing to note that the intention of the paper is to “stimulate debate” (page 1, Objectives of this paper, the paper) in order to inform a further paper, expected in October 2016.
- 2.4. The proposal to protect an enterprise owner’s home should not be extended beyond business debt and set aside for those found to be criminally negligent or widened to encompass wrongful trading, in much the same way as directors of limited companies (3.4 & 3.5, below).

¹ [Ipsos MORI Social Research Institute](#)

- 2.5. The proposal to protect a primary residence favours a specific class of person in business. To address this, consideration should be given to widening the scope of what assets could be covered under SEPA (3.6 – 3.10, below)
- 2.6. A cap to the level of protection granted under SEPA is entirely reasonable, the problem is agreeing on what constitutes the correct figure. The main problem to be tackled when setting the limit is what might be reasonable in one region of the UK might be excessive, or insufficient, in another (3.12 & 3.13, below).
- 2.7. AAT is reassured that SEPA registration information would be maintained and be made publicly available. If responsibility to maintain a register fell to a government department other than HMRC, it would be prudent for a joint online registration process to be set up, thus ensuring registration was not only for SEPA, but also for tax purposes (3.18 – 3.21, below).
- 2.8. What SEPA has to offer could easily be covered by the insurance industry. Thus avoiding the need for the introduction of a SEPA model (3.31, below).
- 2.9. While it is hard to argue against the merits of protecting business owners' main assets, such as their primary residences, the real risk is that SEPA might just lead to an additional layer of complexity without offering any material benefits.

3. AAT response to the consultation paper

- 3.1. The following paragraphs outline AAT's response to the proposals set out in the consultation paper.

Question 1: Do you agree with this broad outline of the SEPA model? In particular do you agree with protection being only in terms of business debt? If not, what would be the most practical approach?

- 3.2. The broad outline of SEPA, as set out in the paper (page 3) is reasonable, in that the normal rules of taxation, accounting and employment status remain unchanged.
- 3.3. In reality, the only change to the position currently faced by a self-employed person is that they will be able to protect their own home.
- 3.4. The proposal to protect the enterprise's owner home should not be extended beyond business debt.
- 3.5. While entirely reasonable that the protection should not be afforded to the business owner in instances of criminal negligence, it should be widened to take in instances of wrongful trading in much the same way as directors of limited companies.

For example:

Where there is no evidence that the enterprise owner has considered its worsening financial situation and its potential effect on creditors, or

When faced by a deteriorating business climate the owner had not

economised and they had continued to spend money as before, including not taking steps to cut their level of drawings, or

When the owner sought to pay one business creditor over another.

Question 2: Do you agree that only the primary residence should be protected?

- 3.6. The protection of a primary residence is a good starting point. It does however single out a specific group and place them in a better position than their non-home-owning colleagues.
- 3.7. For example; a person who is self-employed and saving hard to accrue sufficient funds to enter the housing-market could easily hold funds on deposit of £15,000 - £20,000 to be used at some point in the future to acquire a primary residence. However, they would not be afforded the same level of protection as a homeowner with a similar level of equity in their primary residence.
- 3.8. Taking into account the above scenario, or similar, AAT urges the OTS to give consideration to widening the number and type of assets to be protected.
- 3.9. In the same vein, those seeking to use SEPA should be able to nominate assets to be protected, not only at the time of registration but also post-registration
- 3.10. Without an extension protection to other non-business assets, such as help-to-buy ISAs, it is likely that many of those that the OTS is trying to help to avoid the need to incorporate will still need to do.

Question 3: We have not proposed that we cap the value of the protected primary residence. Do you think this would be necessary to prevent risk of abuse? If so what would be a suitable cap?

- 3.11. It would seem entirely appropriate, from a prevention of abuse stance, that a cap be introduced.
- 3.12. The question which the OTS is no doubt already aware of is, "at what level should it be set". For example, if the cap is to be set at the national average price of a family home, it would be overly generous in regions where housing prices are depressed and the reverse, say in London.
- 3.13. It would be prudent to introduce a cap by reference to the level of free equity and not a property's market value. While the value of a house might be significantly above the level at which a cap is set, the level of free equity in that property might be minimal.
- 3.14. OTS should also give consideration to a primary residence being jointly owned, either as joint tenants or tenants in common, recognising that there may be legal implications arising from such arrangements which should be considered when devising the concept of capping.
- 3.15. AAT does not have a view on what would be a suitable cap.

Question 4: Are these qualifications and restrictions reasonable? Or would they damage someone's ability to get back into business after having problems? Are there any other individuals who should or should not be allowed to apply for SEPA status?

- 3.16. Entitlement to work in the UK is an essential element of acquiring SEPA status.
- 3.17. A similar requirement for a valid national insurance number (nino) does not seem to be quite as reasonable (see 3.24, below)
- 3.18. It would be more appropriate for claimants to be required to complete and file a valid request for SEPA status with a government department charged with maintaining an up-to-date register of all SEPA registered taxpayers. In much the same way as Companies House maintains its register of companies.
- 3.19. When considering the question of which department should maintain such a register there were mixed views from those present at the event as to whether the responsibility should fall to Companies House, because of experience, or HMRC.
- 3.20. It was felt that the SEPA register should be maintained in real-time, online and publicly accessible. AAT is reassured by the OTS's observation that "registration information....would be publicly available" (top of page 5, the paper)
- 3.21. Furthermore, if the responsibility to main a register fell to a government department other than HMRC, it would be prudent for a joint on-line registration process to be set up, thus ensuring that the registrant was not only being SEPA registered, but also as self-employed for tax purposes.
- 3.22. It would seem reasonable that the ability to claim SEPA status should be restricted in a way that mirrors a person's entitlement to claim director status.

Question 5: Is there any other information that should be required for SEPA registration?

- 3.23. The list of information required under the "Registration process" (page 4, the paper) seems reasonable.
- 3.24. As observed earlier (3.16, above) the absence of a valid nino at the time of registration should not restrict registrants' ability to claim SEPA status. It is not uncommon for taxpayers to either not know their nino or to be using an incorrect version.
- 3.25. In instances of absent, or incorrect, information registrants should not be automatically excluded from being awarded SEPA status. Instead, they should be given a period of grace, say six weeks, to obtain the missing information or make a correction.
- 3.26. Provided that the applicant has successfully registered the SEPA status by the end of the grace-period, it should be counted as being awarded from the time of the submission of the original application.

- 3.27. In addition to the other listed information where a tax-payer is registered for self-assessment, and (if applicable) VAT, they should be required to supply their unique taxpayer reference and their VAT registration number.

Question 6: Are there any other formalities and procedures that would have to be considered?

- 3.28. On the basis that the SEPA model should be a simplification aid, AAT does not have other formalities, procedures, or restrictions to recommend for consideration.
- 3.29. The tone, nature, process and the restrictions set out in the 11 bullet points listed under section 5 of the paper (pages 5 & 6) are all considered to be appropriate.

Question 7: Are there any other negative impacts that we need to consider?

- 3.30. Inevitably other negative impacts could be recommended for consideration. On balance, however, those set out in the 7 bullet points under section 6 of the paper (page 6) are sufficient.
- 3.31. It was the view of those present at the event that much of what SEPA has to offer could easily be covered by products developed by the insurance industry. Thus avoiding the need for the introduction of a SEPA model.
- 3.32. As acknowledged in bullet point four, the insurance industry might have a role to play and if this is the case it could avoid the need to develop a new business structure.
- 3.33. AAT is pleased to note that as part of the SEPA evaluation process the OTS will seek to engage further "with the wider community" in respect of the risks.

Question 8: What is your evaluation of the SEPA concept? Will it be a useful addition to the UK business landscape and encourage enterprise?

- 3.34. Those present were sceptical that SEPA would encourage enterprise and concerned that rather than being a simplification it would add another layer of complexity by introducing another legal structure.
- 3.35. One area where SEPA was singled out as having potential benefit is that it could address the feeling of loss of control that is often experienced by a former self-employed person on incorporation.
- 3.36. Some questioned why a 1-person equivalent to a limited liability partnership could not be introduced.
- 3.37. As acknowledged under bullet point 9 of section 5 (page 5, the paper) many who advance credit are likely to seek personal guarantees, or secure loans against a residence. Thus diluting the value of SEPA.
- 3.38. Irrespective of whether SEPA would be a useful addition to the UK business landscape, agents would need to recommend the SEPA model over normal self-employment. Failure to make the recommendation could leave them exposed to negligence claims at a later date. Their recommendations alone would drive the take up of SEPA.
- 3.39. Whilst there is merit in the idea of protecting business owner's main assets such as their primary residences, there is not widespread support for the wholesale change necessary

to give effect to this. The benefits do not appear to outweigh the risks and likewise this does not convincingly meet the stated objective of simplification.

4. About AAT

- 4.1. AAT is a professional accountancy body with approximately 50,000 full and fellow members and 80,000 student and affiliate members worldwide. Of the full and fellow members, there are over 4,200 licensed accountants who provide accountancy and taxation services to individuals, not-for-profit organisations and the full range of business types.
- 4.2. AAT is a registered charity whose objectives are to advance public education and promote the study of the practice, theory and techniques of accountancy and the prevention of crime and promotion of the sound administration of the law.

5. Further information

If you have any questions or would like to discuss any of the points in more detail then please contact Aleem Islan, AAT Technical Consultation Manager, at:

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