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A look at...

Personal Tax

2017

Personal Tax

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CHARITABLE GIVING

If you are thinking of making a gift to charity, this factsheet summarises how to make tax-effective gifts. You can get tax relief on gifts to UK charities if you give:
• under Gift Aid
• through a Payroll Giving scheme, run by your employer,or
• by making a gift of certain shares or land.

Location of the charity

UK charitable tax reliefs are available to certain organisations which are the equivalent of UK charities and Community Amateur Sports Clubs (CASCs) in the EU, Norway and Iceland.

UK donors are able to receive the same tax reliefs in respect of these donations and legacies that enjoy for donations to UK charities.

Gift Aid

If you pay tax, Gift Aid is a scheme by which you can give a sum of money to charity and the charity can normally reclaim basic rate tax on your gift from HMRC. That increases the value of the gift you make to the charity. So for example, if you give £10 using Gift Aid in 2014/15 that gift is worth £12.50 to the charity.

You can give any amount, large or small, regular or oneoff.

If you do not pay tax, you should not use Gift Aid.

How does a gift qualify for gift aid?

There are 3 main conditions. You must:

• make a declaration to the charity that you want your gift to be treated as a Gift Aid donation
• pay at least as much tax as the charities will reclaim on your gifts in the tax year in which you make them (tax credits on dividend income will count towards the tax paid)
• not receive excessive benefits in return for your gift.

Making a declaration

The declaration is the charity's authority to reclaim tax from HMRC on your gift.

The declaration can be in writing or orally but, usually, the charity will provide a written declaration form.

You do not have to make a declaration with every gift. In order to make a Gift Aid donation you'll need to make a Gift Aid declaration. The charity will normally ask you to complete a simple form - one form can cover every gift made to the same charity or CASC for whatever period you choose, and can cover gifts you have already made (backdating your claim for up to four years) and/or gifts you may make in the future.

Membership subscriptions through Gift Aid

You can pay membership subscriptions to a charity through Gift Aid, provided any membership benefits you receive do not exceed certain limits. The current limits on the value of benefits received relative to donations are:

• 25% of the value of the donation, where the donation is less than £100
• £25, where the value of the donation is between £100 and £1,000
• 5% of the value of the donation, where the donation exceeds £1,000

There is an overriding limit on the value of benefits received by a donor in a tax year as a consequence of donations to a charity, which is £2,500.

However, you can disregard free or reduced entry to view any property preserved, maintained, kept or created by a charity in relation to their charitable work.

Fundraising events

Where you have raised money which has simply been collected from other people, such as on a flag day, and the other people have not made a declaration to the charity that they are taxpayers, the payment is not made under Gift Aid and generally no tax relief is due but see below regarding the introduction of the Gift Aid Small Donations Scheme.

However, if you have been sponsored for an event, and each sponsor has signed a Gift Aid declaration, then the charity can recover the tax on the amounts covered by declarations. Charities may produce sponsorship forms for this.

Higher rate and additional rate taxpayers

If you are a higher/additional rate taxpayer, you can claim tax relief on the difference between the basic rate and higher/additional rate of tax (through your tax return). Relief is given either for the tax year of payment or in some cases it is now possible to elect to receive the benefit of the higher/additional rate tax relief one year earlier than previously.

You should therefore keep a record of payments made under Gift Aid for each tax year.

The time limit for claiming tax relief on Gift Aid donations is four years. This time limit applies to the charity and the individual making the gift.

Tainted donations to charity

Tax relief is denied on donations where one of the main purposes of the donation is to receive a tax advantage for the donor or connected person directly or indirectly from the charity. There is no monetary limit on the amount of the donation which may be caught by these rules.

Gift Aid Small Donations Scheme (GASDS)

Charities can use Charities Online for repayment of tax on other income and claims for top-up payments under the new Gift Aid Small Donations Scheme (GASDS). Charities and Community Amateur Sports Clubs (CASC) can claim a top-up payment on cash donations of £20 or less without the need to collect Gift Aid declarations.

Charities will generally be able to claim on small donations of up to £8,000 per annum from April 2016, an increase on the previous limit of £5,000. Claiming £8,000 of small donations will result in a repayment of £2,000 for the charity or CASC.

The GASDS is ideal for small cash donations received in collection boxes, bucket collections and during religious services. Charities and CASCs wishing to claim under GASDS will still need to make Gift Aid claims in respect of other donations for which they have a Gift Aid declaration in the same tax year, for example, on regular donations received from supporters. This is called the 'matching rule': every £10 of donations claimed under GASDS must be matched with £1 of donations claimed under Gift Aid in the same tax year.

Payroll Giving

A Payroll Giving scheme allows you to give regularly to charity from your pay and get tax relief on your gifts. The scheme requires your employer to set up and run a scheme. You authorise your employer to deduct your gift from your pay. Every month your employer pays it

over to a Payroll Giving agency approved by HMRC. The agency then distributes the money to the charity or charities of your choice.

Because your employer deducts your gift from your pay or pension before PAYE is worked out, you pay tax only on the balance. This means that you get your tax relief immediately at your highest rate of tax. (The amount you pay in national insurance contributions is not affected).

Gifts of shares or land

Capital gains tax (CGT)

You are not liable to CGT when you make a gift of assets, such as land or shares, to charity, even if the asset is worth more when you donate it than when you acquired it.

Income tax

You may also get income tax relief for these gifts to charity if they are 'qualifying investments'. There are two main types of qualifying investments:

- quoted shares and securities
- land and buildings.

Example:

Alma owns quoted shares with a market value of £10,000 and an original cost to her of £3,000. Alma is a higher rate taxpayer.

Alma gives the shares to the charity. The charity will then sell the shares for £10,000 and keep the full sale proceeds.

Alma will not have a capital gain arising under CGT. She will be entitled to 40% income tax relief on the value of her gift ie £4,000.

Although this sounds a very attractive relief, a comparison should be made of the alternative route of gifting to a charity by selling the investment and giving the net proceeds to charity under Gift Aid.

So, if Alma sold the shares, she would make a capital gain of £7,000 before considering any unused annual exemption. If, say, the CGT bill is nil, she could gift the proceeds of £10,000 under Gift Aid. The charity can reclaim tax of £10,000 x 20/80 = £2,500. Alma is entitled to higher rate relief on the gross gift of £2,500 (£10,000 x 100/80 x 40 - 20%).

Although Alma has received less tax relief (£4,000 compared to £2,500), the charity will have received £12,500 (£10,000 from Alma and £2,500 from HMRC).

Qualifying investments

In more detail, the following investments qualify for the tax relief:
- shares and securities listed or dealt in on the UK Stock Exchange, including the Alternative Investment Market
- shares or securities listed or dealt in on any overseas recognised stock exchange
- units in an authorised unit trust (AUT)
- shares in a UK open-ended investment company (OEIC)
- holdings in certain foreign collective investment schemes (foreign equivalents of AUTs and OEICs)
- freehold interests in land
- leasehold interests in land where the lease period is for a term of years absolute.

You should always contact the charity to ensure that it can accept the shares or the land. Indeed for land, the charity needs to give you a certificate stating that it has acquired the land.

The charity may be able to help you with the transfer procedure.

How we can help

If you would like to help a charity financially, it makes sense to do this in a tax efficient way. We can provide assistance in determining this for you. Please contact us for more detailed advice.

CHILD BENEFIT CHARGE

The High Income Child Benefit charge applies to a taxpayer who has income over £50,000 in a tax year where either they or their partner, if they have one, are in receipt of Child Benefit for the year.
We set out below the main points of the charge and illustrate some of the practical issues.

Does this affect my family?

The High Income Child Benefit charge is payable by a taxpayer who has 'adjusted net income' (explained later) in excess of £50,000 where either they or their partner, if they have one, are in receipt of Child Benefit. Where there is a partner and both partners have adjusted net income in excess of £50,000 the charge only applies to the partner with the higher income.

Practical issues

Some couples with fluctuating income levels may find that they are caught by the charge or perhaps that the partner who usually has the highest income does not actually end up paying the charge as the following example illustrates.

Example

Nicola who receives Child Benefit is employed as a teacher and earns £52,000 a year. Her husband Alan is a self-employed solicitor and his accounting year end is 31 March. He is late in submitting his books and records to his accountant for the year ended 31 March 2017. His results for that year will form his taxable profit for 2016/17. Nicola and Alan do not have any other income other than their earned income but his profits are generally in excess of £60,000. On this basis Nicola assumes that Alan will be liable for the charge.
In January 2018 Alan's accountant completes his tax return, files this in advance of the 31 January deadline and advises that his profit has reduced to £48,000 as he had experienced a number of bad debts.
As a result Nicola has the highest income for 2016/17 and is therefore responsible for paying the charge by 31 January 2018 and she will need to contact HMRC about this.

For couples who do not share their financial details there is a problem as it is difficult to accurately complete their tax return (or know if they need to contact HMRC to request one) if their own income is over £50,000 and Child Benefit is being claimed. Only the highest earning partner is liable so this will need to be determined.

Changes in circumstances

As the charge is by reference to weeks, the charge will only apply to those weeks of the tax year for which the partnership exists. If a couple breaks up, the partner with the highest income will only be liable for the period from 6 April to the week in which the break up occurs.

Conversely, if a couple come together and Child Benefit is already being paid, the partner with the highest income will only be liable to the charge for those weeks from the date the couple start living together until the end of the tax year.

So what is the adjusted net income of £50,000 made up of?

It can be seen that the rules revolve around 'adjusted net income', which is broadly:

- income (total income subject to income tax less specified deductions e.g. trading losses and payments made gross to pension schemes)
- reduced by grossed up Gift Aid donations to charity and pension contributions which have received tax relief at source.

In some cases it may be that an individual may want to donate more to charity or make additional pension contributions for example, to reduce or avoid the charge.
Inequity applies as household income is not taken into account.
Therefore, equalising income for those who have the flexibility to do so such as in family partnerships or family owner managed businesses is important.

Who is a partner for the purpose of the charge?

A person is a partner of another person at any time if any of the following conditions are met at that time. The persons are either:

- a man and a woman who are married to each other and not separated or
- a man and a woman who are not married to each other but are living together as husband and wife.

Similar rules apply to same sex couples.

The charge

An income tax charge will apply at a rate of 1% of the full Child Benefit award for each £100 of income between £50,000 and £60,000. The charge on taxpayers with income above £60,000 will be equal to the amount of Child Benefit paid.

Example for 2016/17

The Child Benefit for two children amounts to £1,788 per annum. The taxpayer's adjusted net income is £55,000. The income tax charge will be £894. This is calculated as £1,788 x 50% (£55,000 - £50,000 = £5,000/£100 x 1%).

How does the administration operate?

In the self assessment system individuals are required to notify HMRC if they have a liability to income tax, capital gains tax and the High Income Child Benefit Charge by 6 October following the tax year. This requirement is amended to include situations where the person is liable to the Child Benefit charge.
In addition, the charge is included in PAYE regulations so that it can be collected through PAYE, using a reduced tax code. It is also included in the definition of tax liability, so that it could potentially affect payments on account and balancing payments.

So should you continue to claim Child Benefit?

It is important to appreciate that Child Benefit itself is not liable to tax and the amount that can be claimed is therefore unaffected by the charge. It can therefore continue to be paid in full to the claimant even if they or their partner have a liability to the charge.

On the other hand Child Benefit claimants are able to elect not to receive the Child Benefit to which they are entitled if they or their partner do not wish to pay the charge. However, this will not affect the credit available (for state pension purposes) to certain people who stay at home to look after children (provided that an initial claim for child benefit has been made when the child is born).
An election can be revoked if a person's circumstances change.

But I don't receive a tax return?

It may well be that you and/or your partner have not received a tax return before but this may need to change. You need to tell HMRC by 6 October following the end of the tax year if you think a charge may be due.

Guidance

HMRC have issued some guidance on the charge and the options available which can be found at https://www.gov.uk/child-benefit-tax-charge.This should be essential reading for many families.

How we can help

If you are unsure about anything to do with this charge or would like to discuss the matter further including how we might be able to minimise the tax charge which may apply to your family, please do not hesitate to contact us.

ENTERPRISE INVESTMENT SCHEME

The purpose of the Enterprise Investment Scheme (EIS) is to help certain types of small higher-risk unquoted trading companies to raise capital. It does so by providing income tax and CGT reliefs for investors in qualifying shares in these companies.

There are really two separate schemes within EIS:

• a scheme giving income tax relief on the investment and a CGT exemption on gains made when the shares are disposed of and/or
• a scheme aimed at providing a CGT deferral.

An individual can take advantage of either or both of these schemes.

EIS reliefs available

Income tax relief

• Investors may be given income tax relief at 30% on their investments of up to £1,000,000 a year.

• The income tax relief is withdrawn if the shares are disposed of within three years.

CGT exemption

• Gains on the disposal of EIS shares are exempt unless the income tax relief is withdrawn.

• The CGT exemption may be restricted if an investor does not get full income tax relief on the subscription for EIS shares.

• Losses on the disposal of EIS shares are allowable. The amount of the capital loss is restricted by the amount of the EIS income tax relief still attributable to the shares disposed of.

• A capital loss arising on the disposal of EIS shares can be set against income.

CGT deferral

• Gains arising on disposals of any asset can be deferred against subscriptions for shares in any EIS company.

• Shares do not have to have income tax relief attributable to them in order to qualify for deferral relief.

• The gain will become chargeable in the tax year when the subscription shares are disposed of.

• There is no upper limit on the amount of deferral relief available to an individual although there is a limit on investment in a single company or group of companies.

Qualifying companies

Companies must meet certain conditions for any of the reliefs to be available for the investor.

• The company must be unquoted when the shares are issued and there must be no arrangement in existence at that time for it to cease to be unquoted.

• All the shares comprised in the issue must be issued to raise money for the purpose of a qualifying business activity.

• The money raised by the share issue must be wholly employed within a specified period by the company.

• The company or group must generally have fewer than 250 full time employees.

• The size of the company is limited to £15 million (gross assets).

• The amount of capital raised in any 12 month period is limited to £5 million.

• The company must not be regarded as an 'enterprise in difficulty' under EC guidance.

• The company need only have a permanent establishment in the UK rather than carrying on a qualifying trade wholly or mainly in the UK.

Qualifying business activities

A trade will not qualify if excluded activities amount to a substantial part of the trade. The main excluded activities are:

• dealing in land, in commodities or futures or in shares, securities or other financial instruments

• financial activities

• dealing in goods other than in an ordinary trade of retail or wholesale distribution

• leasing or letting assets on hire

• receiving royalties or licence fees, other than, in certain cases, such payments arising from film production, or from research and development

• providing legal or accountancy services

• property development

• farming or market gardening

• holding, managing, or occupying woodlands

• operating or managing hotels, guest houses or hostels

• operating or managing nursing homes or residential care homes

• ship building

• coal and steel production.

Time period in which the money is invested

The time limit for the employment of money invested is to two years from the issue of the shares or if later two years from the commencement of the qualifying activity if later.

Changes to the rules for qualifying companies

Over the years, governments make amendments to what are regarded as qualifying companies for EIS. The thrust of the changes is to ensure well-targeted support for investment into small and growing companies, with a particular focus on innovative companies.

How to qualify for income tax relief

Eligibility for income tax relief is restricted to companies with which you are not 'connected' at any time during a period beginning two years before the issue of the shares and ending three years after that date, or three years from the commencement of the trade if later.

You can be connected with a company in two broad ways:

• by virtue of the size of your stake in the company or

• by virtue of a working relationship between you and the company.

In both cases the position of your 'associates' is also taken into account.

Size of stake

You will be connected with the company at any time when you control directly or indirectly possess, or are entitled to acquire, more than 30% of the ordinary share capital of the company.

Working relationship

You will be connected with the company if you have been an employee or a paid director of the company.

There is an exception to this rule if you become a paid director of the company after you were issued with the shares.

You must never previously have been connected with the company and must not become connected with it in any other way. Also, you must never have been involved in carrying on the whole or any part of the trade or business carried on by the company.

How to qualify for CGT deferral relief

You can defer a chargeable gain which accrues to you on the disposal by you of any asset. In addition, you can defer revived gains arising to you in respect of earlier EIS, Venture Capital Trust (VCT) or CGT reinvestment relief investments.

There are some restrictions on investments against which gains can be deferred. These are designed, broadly, to prevent relief being obtained in circumstances where there is a disposal and acquisition of shares in the same company.

Receiving value from a company

The EIS is subject to a number of rules which are designed to ensure that investors are not able to obtain the full benefit of EIS reliefs if they receive value from the company during a specified period. If relief has already been given, it may be withdrawn.

Examples of the circumstances in which you would be treated as receiving value from the company are where the company:

- buys any of its shares or securities which belong to you
- makes a payment to you for giving up the right to payment of a debt (other than an ordinary trade debt)
- repays a debt owed to you that was incurred before you subscribed for the shares
- provides you with certain benefits or facilities
- waives any liability of yours or an associate's to the company
- undertakes to discharge, any such liability to a third party
- lends you money which has not been repaid before the shares are issued.

Receipts of 'insignificant' value will not cause the withdrawal of relief.

How we can help

It is not possible to cover all the detailed rules of the schemes in a factsheet of this kind. If you are interested in using the EIS please contact us.

We can also help to guide you through the implementation of a scheme which is suitable for your circumstances.

INDIVIDUAL SAVINGS ACCOUNTS

Successive governments, concerned at the relatively low level of savings in the UK economy have over the years introduced various means by which individuals can save through a tax-free environment.

What is an ISA?

ISAs are tax-exempt savings accounts available to individuals aged 18 or over who are resident and ordinarily resident in the UK. ISAs are only available to individual investors and cannot be held jointly.
ISAs are guaranteed to run for ten years although there is no minimum period for which the accounts must be held.

Investment limits

The overall annual savings limit is £20,000 from 6 April 2017.

Investment choices

Investors are allowed to invest in a cash ISA, an investment ISA, an Innovative Finance ISA, or a combination of the three subject to not exceeding the overall annual investment limit.
Investors are to transfer their investments from a stocks and shares ISA to a cash ISA (or vice versa).
ISAs are allowed to invest in cash (including bank and building society accounts and designated National Savings), stocks and shares (including unit and investment trusts and government securities with at least five years to run) and life assurance.
A wide range of securities including certain retail bonds with less than five years before maturity, Core Capital Deferred Shares issued by building societies, listed bonds issued by Co-operative Societies and Community Benefit Societies and SME securities that are admitted to trading on a recognised stock exchange are eligible to be held in a ISA, Junior ISA or Child Trust Fund (CTF).
A recent introduction is the Innovative Finance ISA, for loans arranged via a peer-to-peer (P2P) platform. Peer-to-peer lending is a small but rapidly growing alternative source of finance for individuals and businesses. The Innovative Finance ISA may also invest in debt securities offered via crowdfunding platforms.

Withdraw and replace monies

From 6 April 2016, ISA savers may be able to withdraw and replace money from their cash ISA without it counting towards their annual ISA subscription limit for that year where they hold a 'Flexible ISA'.

Additional ISA allowance for spouses on death

An additional ISA allowance is available for spouses or civil partners when an ISA saver dies. The additional ISA allowance is equal to the value of a deceased person's accounts at the time of their death and is in addition to the normal ISA subscription limit. There are time limits within which the additional allowance has to be used. In certain circumstances an individual can transfer to their own ISA non-cash assets such as stocks and shares previously held by their spouse.
In most cases it is envisaged that the additional allowance will be used to subscribe to an ISA offered by the same financial institution that provided the deceased person's ISA. As the new regulations allow the transfer of stocks and shares directly into the new ISA, in many cases the effect will be that the investments are left intact and the spouse becomes the new owner of the deceased person's ISA.

The tax advantaged treatment of ISAs continue whilst an individual's estate is in administration.

Tax advantages

The income from ISA investments is exempt from income tax.
Any capital gains made on investments held in an ISA are exempt from capital gains tax.

Uses of an ISA

Many people use an ISA in the first instance, to save for a rainy day. Since they were first introduced people have used them to save for retirement, to complement their pension plans or to save for future repayment of their mortgage to give just a few examples. We have known young people, wary of commitment to long-term saving start an ISA and when more certain of the future use it as a lump sum to start another financial plan.

Help to Buy ISA

The government has introduced the Help to Buy ISA, which provide a tax free savings account for first time buyers wishing to save for a home.
The scheme will provide a government bonus to each person who has saved into a Help to Buy ISA at the point they use their savings to purchase their first home. For every £200 a first time buyer saves, the government will provide a £50 bonus up to a maximum bonus of £3,000 on £12,000 of savings.
Help to Buy ISAs are subject to eligibility rules and limits:

- An individual is only be eligible for one account throughout the lifetime of the scheme and it is only available to first time buyers.
- Interest received on the account will be tax free.
- Savings are limited to a monthly maximum of £200 with an opportunity to deposit an additional £1,000 when the account is first opened.
- The government will provide a 25% bonus on the total amount saved including interest, capped at a maximum of £3,000 which is tax free.
- The bonus will be paid when the first home is purchased
- The bonus can only be put towards a first home located in the UK with a purchase value of £450,000 or less in London and £250,000 or less in the rest of the UK.
- The government bonus can be claimed at any time, subject to a minimum bonus amount of £400.
- The accounts are limited to one per person rather than one per home so those buying together can both receive a bonus.

Once an account is opened there is no limit on how long an individual can save into it and no time limit on when they can use their bonus.

Lifetime ISA

A new Lifetime ISA is available from 6 April 2017 for adults under the age of 40. Individuals will be able to contribute up to £4,000 per year and receive a 25% bonus on the contributions from the government. Funds, including the government bonus, can be used to buy a first home at any time from 12 months after opening the account, and can be withdrawn from age 60 completely tax-free.
Further details of the new account are as follows:

- Any savings an individual puts into the account before their 50th birthday will receive an added 25% bonus from the government.
- There is no maximum monthly contribution and up to £4,000 a year can be saved into a Lifetime ISA.
- The savings and bonus can be used towards a deposit on a first home worth up to £450,000 across the country.
- Accounts are limited to one per person rather than one per home, so two first time buyers can both receive a bonus when buying together.
- Where an individual already has a Help to Buy ISA they will be able to transfer those savings into the Lifetime ISA in 2017, or continue saving into both. However only the bonus from one account can be used to buy a house.
- Where the funds are withdrawn at any time before the account holder is aged 60 they will lose the government bonus (and any interest or growth on this) and will also have to pay a 5% charge.
- After the account holder's 60th birthday they will be able to take all the savings tax-free.

Junior Individual Savings Account (Junior ISA)

Junior ISAs are available for UK resident children under the age of 18 who do not have a Child Trust Fund account. Junior ISAs are tax advantaged and have many features in common with ISAs. They can be cash or stocks and shares based products. The annual subscription limit for Junior ISA and Child Trust Fund accounts is £4,128 for 2017/18 (£4,080 for 2016/17).
A transfer of savings from a CTF to a Junior ISA is permitted at the request of the registered contact for the CTF.

How we can help

Please contact us if you would like any further information on ISAs.

NON-DOMICILED INDIVIDUALS

The following sets out the rules which deal with the taxation in the UK of income arising outside the UK, for non UK domiciled individuals.

The issue

An individual who is resident in the UK but is not domiciled (referred to as 'non-dom') may opt to be taxed on what is termed the 'remittance basis' in respect of income and capital gains arising outside the UK. What this means is that instead of being taxed on their actual income/gain arising in the year, they are taxed on the amount of that income/gain actually brought into the UK in the tax year.
Every non-dom must give very careful consideration to their UK tax position and take extreme care in planning their overseas income and capital gains.

Claiming the remittance basis

The starting point of liability for all non-doms is that overseas income/gains are taxable on the arising basis just as they are for any UK domiciled individual. The non-dom will have the option of making a claim for the remittance basis to apply, but if they make this claim, they will automatically forfeit their personal allowance for income tax purposes and their annual exemption for CGT. This will obviously impact on their total tax liability including any UK income/gains. The main situation where a non-dom will be able to benefit from the remittance basis without making a claim and will therefore retain their allowances is when they remit to the UK all but a maximum of £2,000 of their income and gains arising abroad in the year.

Example

Jan, who is domiciled in Poland but who has been living in the UK for five years, has rental income arising from the letting of property in Poland. Let's pose two different scenarios for 2017/18 assuming his overseas income is £5,000.
Scenario 1: He remits £1,000 to the UK – he can pay tax on the full £5,000 as it arises and he will retain his personal allowance against that and any UK source income. If he claims the remittance basis he will pay tax on £1,000 but will lose his personal allowance against that and any UK source income.
Scenario 2: He remits £3,000 to the UK. He can have the benefit of the remittance basis and pay tax on only £3,000 because he has left no more than £2,000 unremitted. He will retain his personal allowance.

Claiming the remittance basis - long term residents

What is a long term resident?

Matters become more complex and serious when an individual falls within the definition of a long term UK resident. This will arise when the individual has been resident in the UK for at least seven out of the nine UK tax years preceding the one for which liability is being considered. For these purposes a part year of residence counts as a full year. In considering the position for 2017/18 it is necessary to look at the individual's UK residence position going back as far as 2008/09 (ie to 6 April 2008). If they have been UK resident for at least seven of those years then they will be classed as a long term resident for the purpose of the remittance basis.

Example

Sanjay first came to the UK in July 2010. He will be classed as resident here from 2010/11 which will mean that he meets the seven year rule and will therefore be treated as a long term resident in 2017/18. If his residence had not commenced until July 2011 he would only have six years of residence and would not become a long term resident until 2018/19.

What are the implications of being a long term resident?

Essentially the long term resident (who must be 18 years of age or over at some time in the tax year concerned) can only claim the benefit of the remittance basis if they pay an additional £30,000 in addition to the tax on any income or gains remitted. This sum is known as the 'remittance basis charge' (RBC).
The rules surrounding this charge are complex but the 'bare bones' are as follows:

- the charge effectively represents tax on unremitted income or gains
- the non-dom nominates specific income/gains to represent this charge
- the sums nominated cannot then be charged to UK tax even if they are subsequently remitted to the UK in a later year
- the nominated income/gains are deemed to be remitted only after all other unremitted income/gains have come into the UK
- tax on the sums nominated may be eligible for relief under a double tax agreement (DTA).

The RBC is not avoided where there is a failure to nominate specific income/gains and such failure may result in duplicate or higher taxation in future years.

Example

Let us assume that Sanjay is then a long term resident for 2017/18 and that he has overseas income arising in India of £6,000. He can only secure the remittance basis for 2017/18 if he pays the RBC. Clearly it would be nonsensical for him to pay that charge to avoid tax on say for example £4,000 of income which was unremitted. He will therefore not elect for the remittance basis and will pay UK tax on the full £6,000 of income arising from India. If that income has been subject to tax in India he may be entitled to set any Indian tax against his UK liability.

Example

Sergio is a very wealthy Spaniard who has been living in the UK for seven years. He is a higher rate UK tax payer. In 2017/18 he has income of £150,000 arising in Spain and also makes a capital gain of £500,000 on the sale of a Spanish commercial property. He remits none of this to the UK in 2017/18.
He claims the remittance basis and obviously has no liability on remitted income because there is none. He will have to pay the RBC of £30,000 and must nominate income or gains to represent this sum. He could nominate £150,000 of the capital gain which, taxed at 20%, would represent a liability of £30,000.
That would satisfy the RBC and would mean that £150,000 of the gains would not be taxed if it is subsequently remitted. It would also mean, subject to the terms of the UK / Spanish DTA, that he may be eligible for relief in respect of any Spanish tax on this sum.

Higher RBC charges for some

A higher RBC charge applies for an individual that has been UK resident for 12 out of the previous 14 years. This charge is currently £60,000. A further additional RBC was introduced for those resident for 17 out of the previous 20 years of £90,000 but this is not relevant for 2017/18 onwards due to a fundamental change in the taxation of certain long term UK resident non UK doms (considered later in this briefing).

Example

If Sergio (from the previous example) has been living in the UK for say 12 years then given the same circumstances he may decide that £60,000 is too high a price to pay.
If he did decide to claim the remittance basis there is still no liability on remitted income because there is none. He would have to pay the increased RBC of £60,000 and must nominate income or gains to represent this sum. He could nominate £300,000 of the capital gain which, taxed at 20%, would represent a liability of £60,000.
That would satisfy the RBC and would mean that £300,000 of the gains would not be taxed if it is subsequently remitted. It would also mean, subject to the terms of the UK / Spanish DTA, that he may be eligible for relief in respect of any Spanish tax on this sum.

What is a remittance?

HMRC take the view that whatever method an individual uses to bring income or gains into the UK it may be treated as a remittance. The rules are very detailed and it is only possible here to give a brief outline.

Relevant person

Essentially a remittance can be caught if it is for the benefit of any person who, in relation to the taxpayer (ie the non-dom with overseas income/gains), is within the definition of a relevant person. That list includes:

- the taxpayer
- their spouse or civil partner
- a partner with whom they are living as a spouse or civil partner
- any child or grandchild under 18 years of age

- a close company in which any relevant person is a shareholder
- a trust in which any relevant person is a beneficiary.

Basic concept of a remittance

Two conditions must be in place for a remittance to arise. Firstly property, money, or consideration for a service, must be brought into the UK for the benefit of a relevant person and secondly, the funds for that property etc must be derived directly or indirectly from the overseas income and gains. These rules are much wider than the old rules. Some examples will help to explain the scope.

Example

Alex, a wealthy Canadian lives in the UK with his wife and young children. He has a significant bank deposit in Jersey which generates a large amount of income each year. Any of the following uses of that income would constitute a remittance for UK tax purposes:

- he buys an expensive car in Germany and brings it into the UK
- he opens a bank account in the UK for each of his children with funds from Jersey
- he sends his wife on an expensive weekend at a spa and the bill for the break is sent direct to Jersey for settlement
- he uses a credit card in the UK which is settled on a monthly basis out of the Jersey income.

There are some exceptions for example clothes, watches and jewellery for personal use and other goods up to a value of £1,000.

A more indirect route is also caught

In the past it had been possible to use a route known as 'alienation' to avoid the remittance basis. This would involve an individual giving someone else their overseas income and then that individual bringing the money into the UK. In the recipient's hands it would have represented capital and the remittance would have been avoided. Now such a route is not possible. Any attempt at 'alienation' which involves the funds ultimately being brought into the UK for the benefit of a relevant person will be caught as a remittance by the taxpayer. This rule is likely to cause some difficult situations.

Example

Alex gifts some of the Jersey income to an adult son. He uses the money to pay for a UK school trip for his own son. The grandson is a relevant person as far as Alex is concerned and this payment will constitute a remittance on which Alex is taxable in the UK.

Other issues

There are a number of other issues covered by the rules such as:

- transitional arrangements to deal with property acquired before 6 April 2008
- transitional arrangements to deal with payment of interest on overseas loans used to fund the purchase of a UK property
- the identification of remittances from mixed funds
- dealing with gains arising in offshore trusts.

Relief for business investment

Where a non-dom remits funds to the UK which are then invested in a qualifying business in the UK those funds are not treated as a remittance so the remittance basis may be more attractive. It should be noted, however, that a claim for the remittance basis still involves paying the appropriate RBC which may be due.
The rules for Business Investment Relief are detailed (and have been slightly improved with effect from April 2017) but the key elements are:

- the investment must be in shares or loans to a trading company or a company which will invest in trading companies,or a company which is a combination of the two
- the company must be unquoted
- the non-dom (or any relevant person in relation to the non-dom) must not receive any benefit from the company which is directly or indirectly attributable to the investment
- when the investment is subsequently realised the non-dom will have 45 days to either reinvest in another qualifying company or remove the funds from the UK otherwise they will be treated as a remittance in that later year.

Key changes for the long term resident non-UK domicile

A number of fundamental changes are to be made from 6 April 2017:

- for individuals who are non-UK domiciled but who have been resident for 15 of the previous 20 tax years or
- where an individual was born in the UK with a UK domicile of origin and resumes UK residence having obtained a domicile of choice elsewhere.

Such individuals will be classed as 'deemed' UK domiciles for income tax, CGT and IHT purposes and will be assessable on worldwide income, gains and assets. They will not be able to access the remittance basis.

IHT matters

The concept of deemed UK domicile has existed for many years but for IHT only. A UK deemed domicile is chargeable on worldwide assets for UK IHT rather than only on UK assets if non-UK domicile. The effect of these reforms is that an individual will become deemed UK domiciled for IHT at the start of their sixteenth consecutive year of UK residence, rather than at the start of their seventeenth year of residence

under the rules which have applied to 5 April 2017. For IHT purposes only a deemed domicile will lose deemed domicile status at the start of the fourth year of non UK residence.

IT and CGT matters

Legislation will allow a non-UK domiciled individual who has been taxed on the remittance basis to rearrange and transfer amounts between overseas mixed fund bank accounts without being subject to the offshore transfer rules. This will allow the different elements within the accounts to be separated, thereby allowing clean capital to be remitted to the UK in priority to income and gains.
The draft legislation also provides that the market value of an asset at 5 April 2017 will be able to be used as the acquisition cost for CGT purposes when computing the gain or loss on its disposal where the asset was situated outside the UK between 16 March 2016 and 5 April 2017. This will apply to any individual who becomes deemed UK domicile in April 2017, other than one who is born in the UK with a UK domicile of origin, provided that individual has been subject to a remittance basis charge for any tax year prior to 2017/18.

UK residential property

Changes are also proposed for UK residential property. Currently all residential property in the UK is within the charge to IHT if owned by a UK or non-UK domiciled individual. It is proposed that all residential properties in the UK will be within the charge to IHT where they are held within an overseas structure. This charge will apply whether the overseas structure is held by an individual or trust.

How can we help

Each individual's situation is going to have different problems. Please contact us if you would like to discuss how these rules impact on you and the steps you can take to mitigate their impact.

PERSONAL TAX – SELF ASSESSMENT

Under the self assessment regime an individual is responsible for ensuring that their tax liability is calculated and any tax owing is paid on time.

The self assessment cycle

Tax returns are issued shortly after the end of the fiscal year. The fiscal year runs from 6 April to the following 5 April, so 2016/17 runs from 6 April 2016 to 5 April 2017. Tax returns are issued to all those whom HMRC are aware need a return including all those who are self employed or company directors. Those individuals who complete returns online are sent a notice advising them that a tax return is due. If a taxpayer is not issued with a tax return but has tax due they should notify HMRC who may then issue a return.
A taxpayer has normally been required to file his tax return by 31 January following the end of the fiscal year. The 2016/17 return must be filed by 31 October 2017 if submitted in 'paper' format. Returns submitted after this date must be filed online otherwise penalties will apply.

Penalties

Late filing penalties apply for personal tax returns as follows:

- £100* penalty immediately after the due date for filing (even if there is no tax to pay or the tax due has already been paid)

* Previously the penalty could not exceed the tax due, however this cap has been removed. This means that the full penalty of £100 will always be due if your return is filed late even if there is no tax outstanding. Generally if filing by 'paper' the deadline is 31 October and if filing online the deadline is 31 January.

Additional penalties can be charged as follows:

- over 3 months late – a £10 daily penalty up to a maximum of £900
- over 6 months late – an additional £300 or 5% of the tax due if higher
- over 12 months late – a further £300 or a further 5% of the tax due if higher. In particularly serious cases there is a penalty of up to 100% of the tax due.

Calculating the tax liability and 'coding out' an underpayment

The taxpayer does have the option to ask HMRC to compute their tax liability in advance of the tax being due in which case the return must be completed and filed by 31 October following the fiscal year. This is also the statutory deadline for making a return where you require HMRC to collect any underpayment of tax through your tax code, known as 'coding out'. However if you file your return online HMRC will extend this to 30 December. Whether you or HMRC calculate the tax liability there will be only one assessment covering all your tax liabilities for the tax year.

Changes to the tax return

Corrections/Amendments

HMRC may correct a self assessment within nine months of the return being filed in order to correct any obvious errors or mistakes in the return.
An individual may, by notice to HMRC, amend their self assessment at any time within 12 months of the filing date.

Enquiries

HMRC may enquire into any return by giving written notice. In most cases the time limit for HMRC is within 12 months following the filing date.

If HMRC does not enquire into a return, it will be final and conclusive unless the taxpayer makes an overpayment relief claim or HMRC makes a discovery.
It should be emphasised that HMRC cannot query any entry on a tax return without starting an enquiry. The main purpose of an enquiry is to identify any errors on, or omissions from, a tax return which result in an understatement of tax due. Please note however that the opening of an enquiry does not mean that a return is incorrect.
If there is an enquiry, we will also receive a letter from HMRC which will detail the information regarded as necessary by them to check the return. If such an eventuality arises we will contact you to discuss the contents of the letter.

Keeping records

HMRC wants to ensure that underlying records to the return exist if they decide to enquire into the return.
Records are required of income, expenditure and reliefs claimed. For most types of income this means keeping the documentation given to the taxpayer by the person making the payment. If expenses are claimed records are required to support the claim.

Checklist of books and records required for HMRC enquiry

Employees and Directors

- Details of payments made for business expenses (eg receipts, credit card statements)
- Share options awarded or exercised
- Deductions and reliefs

Documents you have signed or which have been provided to you by someone else:

- Interest and dividends
- Tax deduction certificates
- Dividend vouchers
- Gift aid payments
- Personal pension plan certificates.

Personal financial records which support any claims based on amounts paid eg certificates of interest paid.

Business

- Invoices, bank statements and paying-in slips
- Invoices for purchases and other expenses
- Details of personal drawings from cash and bank receipts

How we can help

We can prepare your tax return on your behalf and advise on the appropriate tax payments to make.
If there is an enquiry into your tax return, we will assist you in answering any queries HMRC may have. Please do contact us for help.

PERSONAL TAX – WHEN IS INCOME TAX AND CAPITAL GAINS TAX PAYABLE?

Under the self assessment regime an individual is responsible for ensuring that their tax liability is calculated and any tax owing is paid on time.

Payment of tax

The UK income tax system requires the payer of key sources of income to deduct tax at source which removes the need for many taxpayers to submit a tax return or make additional payments. This applies in particular to employment and savings income. However this is not possible for the self employed or if someone with investment income is a higher rate taxpayer. As a result we have a payment regime in which the payments will usually be made in instalments.
The instalments consist of two payments on account of equal amounts:

- the first on 31 January during the tax year and
- the second on 31 July following.

These are set by reference to the previous year's net income tax liability (and Class 4 NIC if any).
A final payment (or repayment) is due on 31 January following the tax year.
In calculating the level of instalments any tax attributable to capital gains is ignored. All capital gains tax is paid as part of the final payment due on 31 January following the end of the tax year.
A statement of account similar to a credit card statement is sent to the taxpayer periodically which summarises the payments required and the payments made.

Example

Sally's income tax liability for 2015/16 (after tax deducted at source) is £8,000. Her liability for the following year is £10,500. Payments for 2016/17 will be:

	£
31.1.2017 First instalment (50% of 2015/16 liability)	4,000
31.7.2017 Second instalment (50% of 2015/16 liability)	4,000
31.1.2018 Final payment (2016/17 liability less sums already paid)	2,500
	£10,500

There will also be a payment on 31 January 2018 of £5,250, the first instalment of the 2017/18 tax year (50% of the 2016/17 liability).

Late payment penalties and interest

Using the late payment penalties HMRC may charge the following penalties if tax is paid late:

- A 5% penalty if the tax due on the 31 January 2018 is not paid within 30 days (the 'penalty date' is the day following)
- A further 5% penalty if the tax due on 31 January 2018 is not paid within 5 months after the penalty date
- Additionally, there will be a third 5% penalty if the tax due on 31 January 2018 is not paid within 11 months after the penalty date.

These penalties are additional to the interest that is charged on all outstanding amounts, including unpaid penalties, until payment is received.

Nil payments on account

In certain circumstances the two payments on account will be set at nil. This applies if either:

- income tax (and NIC) liability for the preceding year - net of tax deducted at source and tax credit on dividends - is less than £1,000 in total or
- more than 80% of the income tax (and NIC) liability for the preceding year was met by deduction of tax at source and from tax credits on dividends.

Claim to reduce payments on account

If it is anticipated that the current year's tax liability will be lower than the previous year's, a claim can be made to reduce the payments on account.

How can we help

We can prepare your tax return on your behalf and advise on the appropriate payments on account to make.
We can advise you whether a claim to reduce payments on account should be made and to what amount. Please do contact us for help.

PERSONAL TAX DIVIDENDS AND INTEREST

Dividend and savings allowances are available. We consider the opportunities and pitfalls of the personal tax rules.

Dividend income

When dividends are received by an individual the amount received is the gross amount subject to tax. The availability of the Dividend Allowance (DA), introduced from 2016/17 onwards, means that the first £5,000 of dividends are charged to tax at 0%. Dividends received above this allowance are taxed at the following rates:

- 7.5% for basic rate taxpayers
- 32.5% for higher rate taxpayers
- 38.1% for additional rate taxpayers.

Dividends within the allowance still count towards an individual's basic or higher rate band and so may affect the rate of tax paid on dividends above the £5,000 allowance.
Dividends are treated as the top slice of income and the basic rate tax band is first allocated against other income.
It was announced in Budget 2017 that the DA will be reduced to £2,000 from 6 April 2018.

Example

Mr A has non-dividend income of £41,000 and receives dividends of £9,000. The non-dividend income is taxed first. Of the £41,000 non-dividend income, £11,500 is covered by the Personal Allowance, leaving £29,500 to be taxed at the basic rate. The basic rate band for 2017/18 is £33,500 so this leaves £4,000 of dividend income that is within the basic rate limit before the higher rate threshold is crossed. The DA covers the £4,000, leaving £1,000 of the DA to be used for the dividends in the higher rate band.

The remaining £4,000 of dividends fall in the higher rate tax band and are therefore taxed at 32.5%.

Savings income

Some individuals qualify for a 0% starting rate of tax on savings income up to £5,000. However this rate is not available if non-savings income (broadly earnings, pensions, trading profits and property income) exceeds the starting rate limit.
The Savings Allowance (SA), available from 2016/17 onwards, taxes savings income within the SA at 0%. The amount of SA depends on the individual's marginal rate of tax. An individual taxed at the basic rate of tax has an SA of £1,000 whereas a higher rate taxpayer is entitled to a SA of £500. Additional rate taxpayers receive no SA.
Savings income includes:

- interest on bank and building society accounts
- interest on accounts with credit unions or National Savings and Investments
- interest distributions from authorised unit trusts, open-ended investment companies (OEICs) and investment trusts
- income from government or corporate bonds
- most types of purchased life annuity payments.

Is savings income received net or gross of tax?

This is much more complicated than you may think. The government has removed the requirement (from 6 April 2016) for banks and building societies to deduct tax from account interest they pay to customers.
Some types of interest have always been received without tax deduction at source and will therefore continue to be paid gross. Interest on corporate bonds listed on the London Stock Exchange is paid gross for example. However, in 2016/17 basic rate tax continues to be deducted at source from some forms of savings income such as interest distributions from unit trusts and OEICs. This requirement is removed from April 2017.

Switching investments

Given the lower amount of SA, higher and additional rate taxpayers could seek to maximise their use of the DA by moving investments out of interest bearing investments to ones which pay out dividends. This could be through direct shareholdings or through dividend distributing equity funds in unit trusts or OEICs.
In addition, assets held for capital growth could be transferred to dividend paying investments. Any gains realised by the investors on the sale of assets would be exempt up to the CGT exemption which is £11,300 for 2017/18. Further gains over this amount are only charged to tax at 20% for higher and additional rate taxpayers following the reduction in CGT rates from 6 April 2016.

Interaction between DA and SA

If the amount of dividends an individual receives is covered by the DA but those dividends would have meant that they were higher rate taxpayers without the DA, then this would affect the amount of SA they would receive.

Example

Mrs B has a salary of £42,000, interest income of £1,000 and dividends of £5,000. Although the dividends are covered by the DA, Mrs B's total income is £48,000 so she is a higher rate taxpayer. She would therefore only receive £500 of SA against the £1,000 of interest income.

Check your coding

Where savings income exceeds the SA, there will be tax to pay on the excess. HMRC have indicated that they will normally collect this tax by changing individual's tax codes. To allow them to do this they will use information from banks and building societies. However in some cases HMRC have been overestimating the amount of interest people are likely to earn and adjusting their coding accordingly. So it is worth checking coding notices when they come through.

Gift Aid donations

Take care if you make Gift Aid donations. A charity can reclaim the tax on a Gift Aid donation only if the individual has paid the amount of tax being reclaimed. Prior to April 2016 this tax would have included dividend tax credits and tax deducted at source on interest income.
Following the introduction of the SA and DA, any income within these allowances is not taxed so the tax reclaim by the charity does not relate to tax paid. Where this happens the individual is responsible for ensuring that the donation is covered and HMRC have powers to recover any shortfall from the taxpayer.
So people with lower levels of income and dividends or savings below the DA or SA amounts who make Gift Aid donations could be affected. Individuals will need to withdraw any Gift Aid

declarations that they have made to ensure that they do not get hit with a tax bill.

Planning for spouses

The introduction of Dividend and Savings Allowances may also mean it is time to consider the allocation of investments between husband and wives or civil partners. If just one partner has investments generating dividends or savings it could be beneficial to transfer part of the investments to the other partner to ensure they receive income which utilises their DA or SA. Any transfer of assets between husbands and wives or between civil partners who are living together can be made without any capital gains tax being charged.
With savings rates generally being at about 1.5% - 2% utilising the £1,000 basic rate SA would mean having interest earning assets of between £50,000 and £66,667. For dividends, assuming an average yield of 3%, the investment level would be £166,667 to fully utilise the £5,000 DA.

How we can help

With more allowances available to taxpayers it is important to make sure full use is being made of the tax free amounts. There are a number of areas where you may need specific advice depending on your circumstances so please do not hesitate to contact us.

PROPERTY INVESTMENT – BUY TO LET

In recent years, the stock market has had its ups and downs. Add to this the serious loss of public confidence in pension funds as a means of saving for the future and it is not surprising that investors have looked elsewhere.
The UK property market, whilst cyclical, has proved over the long-term to be a very successful investment. This has resulted in a massive expansion in the buy to let sector.
Buy to let involves investing in property with the expectation of capital growth with the rental income from tenants covering the mortgage costs and any outgoings.
However, the gross return from buy to let properties - ie the rent received less costs such as letting fees, maintenance, service charges and insurance - is no longer as attractive as it once was. Investors need to take a view on the likelihood of capital appreciation exceeding inflation.

Factors to consider

Do

- think of your investment as medium to long-term
- research the local market
- do your sums carefully
- consider decorating to a high standard to attract tenants quickly.

Don't

- purchase anything with serious maintenance problems
- think that friends and relatives can look after the letting for you - you're probably better off with a full management service
- cut corners with tenancy agreements and other legal documentation.

Which property?

Investing in a buy to let property is not the same as buying your own home. You may wish to get an agent to advise you of the local market for rented property. Is there a demand for say, two bedroom flats or four bedroom houses or properties close to schools or transport links? An agent will also be able to advise you of the standard of decoration and furnishings which are expected to get a quick let.

Agents

Letting property can be very time consuming and inconvenient. Tenants will expect a quick solution if the central heating breaks down over the bank holiday weekend! Also do you want to advertise the property yourself and show around prospective tenants? An agent will be able to deal with all of this for you.

Tenancy agreements

This important document will ensure that the legal position is clear.

Taxation

When buying to let, taxation aspects must be considered.

Tax on rental income

Income tax will be payable on the rents received after deducting allowable expenses. Currently allowable expenses include mortgage interest, repairs, agent's letting fees and an allowance for furnishings. Changes were announced in the Summer Budget which impact on the allowable expenses for landlords.

Restriction loan interest relief for 'buy to let' landlords

New rules have been introduced which restrict the amount of income tax relief landlords can get on residential property finance costs to the basic rate of income tax. Finance costs include mortgage interest, interest on loans to buy furnishings and fees incurred when taking out or repaying mortgages or loans. No relief is available for capital repayments of a mortgage or loan.
Landlords will no longer be able to deduct all of their finance costs from their property income. They will instead receive a basic rate reduction from their income tax liability for their finance costs. To give landlords time to adjust, the change will be introduced gradually from April 2017, over four years. The restriction in the relief will be phased in as follows:

- in 2017/18, the deduction from property income will be restricted to 75% of finance costs, with the remaining 25% being available as a basic rate tax reduction
- in 2018/19, 50% finance costs deduction and 50% given as a basic rate tax reduction
- in 2019/20, 25% finance costs deduction and 75% given as a basic rate tax reduction
- from 2020/21, all financing costs incurred by a landlord will be given as a basic rate tax reduction.

This restriction will not apply to landlords of furnished holiday lettings.

Replacement of furnishings

A new relief enables all landlords of residential dwelling houses to deduct the costs they actually incur on replacing furnishings, appliances and kitchenware in the property. The relief is available for expenditure incurred on or after 1 April 2016 for corporation tax and on or after 6 April 2016 for income tax.
This measure gives relief for the cost of replacing furnishings to a wider range of property businesses as previously there was no tax relief for the replacement of furnishings in partly furnished or unfurnished properties.
Examples of eligible capital expenditure are:

- furniture
- furnishings
- appliances (including white goods)
- kitchenware

but would exclude items which are fixtures.
However the relief is limited to the cost of an equivalent item if there is an improvement on the old item. The deduction will not be available for furnished holiday lettings or where rent-a-room relief is claimed.

The end of wear and tear allowances

The 10% wear and tear allowance which was available to landlords of fully furnished properties has been abolished from April 2016.

Tax on sale

Capital gains tax (CGT) will be payable on the eventual sale of the property. The tax will be charged on the disposal proceeds less the original cost of the property, certain legal costs and any capital improvements made to the property. This gain may be further reduced by any annual exemption available.
CGT is generally charged at 10%, within the basic rate and 20% for higher rates. However 18% and 28% rates apply to chargeable gains arising on the disposal of residential property that does not qualify for private residence relief.

CGT is payable on 31 January after the end of the tax year in which the gain is made.
From April 2019, a payment on account of any CGT due on the disposal of residential property will be required to be made within 30 days of the completion of the disposal. This will not affect gains on properties which are not liable for CGT due to Private Residence Relief.

Student lettings

Buy to let may make sense if you have children at college or university. It is important that the arrangement is structured correctly. The student should purchase the property (with the parent acting as guarantor on the mortgage). There are several advantages to this arrangement.

Advantages

This is a cost effective way of providing your child with somewhere decent to live.
Rental income on letting spare rooms to other students should be sufficient to cover the mortgage repayments from a cash flow perspective.
As long as the property is the child's only property it should be exempt from CGT on its eventual sale as it will be regarded as their main residence.
The amount of rental income chargeable to income tax is reduced by a deduction known as 'rent a room relief' (£7,500 from 6 April 2016). In this situation no expenses are tax deductible.
Alternatively expenses can be deducted from income under normal letting rules where this is more beneficial.

Furnished holiday lettings

Furnished holiday letting (FHL) is another type of investment that could be considered. This form of letting is short holiday lets as opposed to letting for the residential market.

The favourable tax regime for furnished holiday letting accommodation includes qualifying property located anywhere in the European Economic Area (EEA). In order to qualify for FHL treatment certain conditions have to be met. These include the property being available for letting for at least 210 days in each tax year and being actually let for 105 days.
Provided that there is a genuine intention to meet the actual letting requirement it will be possible to make an election to keep the property as qualifying for up to two years even though the condition may not be satisfied in those years. This will be particularly important to preserve the special CGT treatment of any gain as qualifying for the lower CGT rate of 10% where the conditions for Entrepreneurs' Relief are satisfied.
Losses arising in an FHL business cannot be set against other income of the taxpayer. Separate claims would need to be made for UK losses and EEA losses. Each can only be offset against profits of the same or future years in each relevant sector.
FHL property has some advantages but it has other disadvantages which should also be considered.

Advantages

You will be able to take a holiday in your own property, or make it available some of the time to your family or friends. However, care would need to be taken to adjust the level of expenses claimed to reflect this private use.
Generally however the rules for allowable expenditure are more generous.

Disadvantages

Holiday letting will have higher agent's fees, advertising costs, and maintenance fees (for example more regular cleaning).
Owning a holiday property may be more time consuming than you think and you

may find yourself spending your precious holiday sorting out problems.
If you would like any further advice in this area please get in touch.

New tax allowance for property and trading income

Two new £1,000 allowances for property and trading income are introduced and take effect for income arising from 6 April 2017.
Where the allowances cover all of an individual's relevant income (before expenses) then they will no longer have to declare or pay tax on this income.
Those with higher amounts of income will have the choice, when calculating their taxable profits, of deducting the allowance from their receipts, instead of deducting the actual allowable expenses.
The trading allowance will also apply for Class 4 NICs.
The new allowances will not apply to income on which rent a room relief is given. Neither will the new allowances apply to partnership income from carrying on a trade, profession or property business in partnership.
The trading allowance may also apply to certain miscellaneous income from providing assets or services to the extent that the £1,000 trading allowance is not otherwise used.

How we can help

Whilst some generalisations can be made about buy to let properties it is always necessary to tailor any advice to your personal situation. Any plan must take into account your circumstances and aspirations.
Whilst a successful buy to let cannot be guaranteed, professional advice can help to sort out some of the potential problems and structure the investment correctly.
We would be happy to discuss buy to let further with you. Please contact us for more detailed advice.

PROPERTY INVESTMENT – TAX ASPECTS

Investment in property has been and continues to be a popular form of investment by many people. It is seen as a route by which:

- relatively secure capital gains can be made on eventual sale
- income returns can be generated throughout the period of ownership
- mortgage finance is covered in repayment terms by the security of the eventual sale of the property and in interest terms by the rental income.

Of course, the net returns in capital and income will depend on a host of factors. But on the basis that the investment appears to make commercial sense what tax factors should you take into account?

Who or what should purchase the property?

An initial decision needs to be made whether to purchase the property:

- as an individual
- as joint owner or via a partnership (often with a spouse)
- via a company.

There are significant differences in the tax effects of ownership by individuals or a company.
Deciding the best medium will depend on a number of factors.

Commercial property

You are currently trading as a limited company

The personal purchase of new offices or other buildings and the charging of rent for the use of the buildings to your company is very tax efficient from an income tax position as:

- the rental you receive from the company allows sums to be extracted without national insurance
- the company will be able to claim a corporate tax deduction for the rent
- finance costs are currently deductible from the rents.

Capital gains

Capital gains on the disposal of an asset are generally calculated by deducting the cost of the asset from the proceeds on disposal and reducing this by the annual exemption. Gains are treated as an individual's top slice of income and generally taxed at 10% and 20% or a combination of the two. However gains on residential property are charged at 18% and 28%.

Capital gains tax and Entrepreneurs' Relief (ER)

Unfortunately ER is unlikely to be available on the disposal of business premises used by your company where rent is paid. This is due to the restrictions on obtaining the relief on what is known as an 'associated disposal'. These restrictions include the common situation where a property is currently in personal ownership, but is used in an unquoted company or partnership trade in return for a rent. Under the ER provisions such relief is restricted where rent is paid.

Residential property

The decision as to who should own a residential property to let is a balancing act depending on overall financial objectives.
The answer will be dependent on the following factors:

- do you already run your business through your own company?
- how many similar properties do you want to purchase in the future?
- do you intend to sell the property and when?

Company versus personal ownership - eventual disposal

If you already run your business through a company it may be more tax efficient to own the property personally as you will be able to make use of your CGT annual exemption (and spouse's annual exemption if jointly owned) on eventual disposal to reduce the gain.
In contrast, a company can still use indexation allowance to reduce a capital gain. This effectively uplifts the cost of the property by the increase in the Retail Price Index over the period of ownership. Indexation is not available to reduce the gain on the disposal by an individual so in situations where indexation allowance is substantial, this could result in lower gains.

Company versus personal ownership - rental income

For personally owned property the net rental income will be taxed at your marginal rate of tax, but if you are financing the purchase with a high percentage of bank finance, the income tax bill will be relatively small. However for rented property with personal ownership the deduction for finance costs is restricted to basic rate relief from April 2017. This restriction is to be phased in over a four year period and will impact higher and additional rate taxpayers.
The net rental income will be taxed at the current corporation tax rate of 19%, which is generally lower than for an individual. Where the purchase is being financed with a high percentage of loan/bank finance, the corporation tax bill will be relatively small.
But there are other factors to consider:

- there is frequently a further tax charge should you wish to extract any of the proceeds from the company
- inserting the property into an existing company may result in your shareholding in that company not qualifying for ER. You could however form another company to protect the trading status of the existing company.

If you do not have a company at present

Personal or joint ownership may be the more appropriate route but there are currently significant other advantages of corporate status particularly if you expect that:

- you will be increasing your investment in residential property and
- you are unlikely to be selling the properties on a piecemeal basis or
- you are mainly financing the initial purchases of the property from your own capital.

If so, the use of a company as a tax shelter for the net rental income can be attractive.

Use of company as a tax shelter

Profits will be taxed at the current corporation tax rate of 19%. This rate applies to trading companies or property investment companies.
Where profits are retained the income may be suffering around half of the equivalent income tax bills. That means there are more funds available to buy more properties in the future.

Tax efficient long-term plans

There are two potential long-term advantages of the corporate route for residential property:

- is there an intention to sell the properties at all? Maybe the intention is to retain them into retirement (see below **Using the company as a retirement fund**)
- can the shares be sold rather than the property? (see below for issues regarding **Selling the shares**)

Using the company as a retirement fund

A potentially attractive route is to consider the property investment company as a 'retirement fund'. If the properties are retained into retirement, it is likely that any initial financing of the purchases of the property has been paid off and there will be a strong income stream. The profits of the company (after paying corporation tax) can be paid out to you and/or your spouse as shareholders.
Changes to the taxation of dividends mean that:

- the cash dividend is the gross amount potentially subject to tax (no tax credits are available)
- a Dividend Allowance charges the first £5,000 of dividends received in a tax year at 0%
- for dividends above £5,000, dividend income will be taxed at 7.5% for basic rate taxpayers, 32.5% for higher rate taxpayers and 38.1% for additional rate taxpayers.

It was announced in Budget 2017 that the Dividend Tax Allowance will be reduced to £2,000 from 6 April 2018.

Selling the shares

CGT will be due on the gain on the eventual sale of the shares.
The share route may also be more attractive to the purchaser of the properties rather than buying the properties directly, as they will only have 0.5% stamp duty to pay rather than the potentially higher sums of stamp duty land tax on the property purchases.

Stamp duty land tax (SDLT)

SDLT is payable by the purchaser of the property although Land and Buildings Transaction Tax is payable in Scotland.

Corporate investment in expensive residential property

Where expensive residential property, valued at more than £500,000 is purchased by a 'non natural person', broadly a company, there is a potential charge - the Annual Tax on Enveloped Dwellings (ATED). The ATED is payable by those purchasing and holding their homes through corporate envelopes, such as companies. In addition a higher rate of SDLT of 15% applies to the purchase.
There are exemptions from the higher rate of SDLT and the ATED charge; in particular, property companies letting out residential properties to third parties.
CGT is charged at 28% on disposals of properties liable to ATED and valued at more than £500,000 from 6 April 2016.

How we can help

This factsheet has concentrated on potentially long-term tax factors to bear in mind.
You need to decide which is the best route to fit in with your objectives. We can help you to plan an appropriate course of action so please do contact us.

SEED ENTERPRISE INVESTMENT SCHEME

The Seed Enterprise Investment Scheme (SEIS) provides tax relief for individuals prepared to invest in new and growing companies. It is the junior version of the Enterprise Investment Scheme (EIS). Investors can obtain generous income tax and capital gains tax (CGT) breaks for their investment and companies can use the relief to attract additional investment to develop their business.

Key features

The key features of the relief can be summarised as follows:

- a qualifying investor will be able to invest up to £100,000 into qualifying companies in a tax year
- they will receive income tax relief of up to 50% of the sum invested
- unused relief in one tax year can be carried back to the preceding tax year if there is unused relief available for that year
- the maximum amount that a company can attract in investment qualifying for SEIS is £150,000 in total
- the company must not have net assets of more than £200,000 before any SEIS investment
- an individual who makes a capital gain on another asset and uses the amount of the gain in making a SEIS investment will not pay tax on 50% of the liability for 2013/14 and beyond subject to certain conditions
- there is a huge amount of anti-avoidance legislation to prevent exploitation for tax avoidance purposes.

Who can invest?

The official term is a ‘qualifying investor’. The primary requirement is that the investor or someone who is associated with them must not be an employee of the company in which the investment is being made. They can however be a director. They must also ensure that they do not have (directly or indirectly) a substantial interest in the company. This is defined by reference to holding more than 30% of any of the following (in either the company itself or a 51% subsidiary of the company):

- ordinary shares
- issued shares
- voting rights
- assets in a winding up.

Which shares qualify?

The shares must be ordinary shares which have been subscribed for wholly in cash and are fully paid up. They must be held for a three year period from the date of issue. The company must have issued the shares for the purpose of raising money to fund a qualifying business activity which either involves the carrying on (or preparations to carry on) a new trade. Using the funds to meet the costs of research and development intended to create or benefit a new qualifying trade will also be acceptable. The money must be spent within three years of the date of issue of the shares. The anti-avoidance requirement is that there must be no pre-arranged exit for the investor involving the purchase of the shares, or the disposal of assets.

Which companies qualify?

The rules are intended to benefit new companies. The basic requirements are that the company must be unquoted. The trade must be a 'new' qualifying trade. This is one not carried out by

either the company or any other person for longer than two years at the date the shares are issued. The company must exist wholly for the purpose of carrying out one or more qualifying trades throughout the three year period from the date of issue of the shares. If the company goes into receivership or administration or is wound up during this period, this will not prevent the relief being given provided there was a commercial justification for the action. The other main conditions relating to the company can be summarised as follows:

- the company must have a permanent establishment in the UK
- the company must be effectively solvent at the date of issue of the shares
- the company may have a qualifying subsidiary
- the company must not be a member of a partnership
- immediately before the investment, the gross assets of the company plus the value of any related entity (one that holds more than 25% of the capital or voting power in the issuing company) must not exceed £200,000
- there are less than 25 full-time employee equivalents in the company and any related entity
- the company must not have had EIS or Venture Capital Trust (VCT) investment before the SEIS shares are issued, and
- the total amount of investment made under SEIS in the company must not exceed an aggregate of £150,000.

Which trades qualify?

The primary requirement is that the company must carry on a genuine new trading venture. There may be a problem if the same activities had been carried on as part of another trade. Basically any trading activity will qualify unless it is an excluded activity within the definitions used for EIS. This means that activities such as property development, retail distribution, hotels, nursing homes and farming will not qualify. The trade must be carried out on a commercial basis.

How is relief obtained?

The relief is given as a reduction against the total tax liability for the year but cannot turn a tax liability into a tax repayment. In that situation the individual would be able to carry back the unused relief to the preceding tax year for use if there was any tax unrelieved for that year.

Examples

Samantha invests £60,000 under SEIS in 2016/17. Potentially her tax relief is 50% of her investment which is therefore worth £30,000. As her tax liability for the year is £45,000, the maximum relief is available to reduce her tax liability to £15,000.
Richard also invests £60,000 under SEIS in 2016/17. His forecast tax liability for 2016/17 is only £20,000 so the claim to relief under SEIS will be limited to £20,000 for that tax year. However, Richard can in addition make a claim to carry back the unused relief of £10,000 (£30,000 less £20,000 relieved in 2016/17) to the preceding tax year 201516.
The relief must be claimed and requires a certificate from the company issuing the shares.

Can the relief be withdrawn?

The short answer is yes if certain events happen within three years of the date on which the shares are issued. The most obvious event is the disposal of the shares in that period. There are complex rules that will cause the relief to be withdrawn if the investor receives value from the company during this period.

What about the CGT position?

Where shares are sold more than three years after the date on which they are issued then any resulting gain is free of CGT. Shares sold within three years would be chargeable but may qualify for Entrepreneurs' Relief if the various conditions are met.
Where a disposal is exempt for gains purposes, this would normally mean that a loss would not be allowable for CGT purposes, but an allowable loss is available under the scheme. Where SEIS income tax relief has been obtained and is not withdrawn then the capital loss is reduced so that tax relief is not duplicated.

Example

Murat invested £25,000 in SEIS in 2012/13 for which he received £12,500 relief against his income tax liability of £35,000. If 4 years later the company is unsuccessful and is liquidated with no value returned to the shareholders then his allowable capital loss will be £12,500 being the amount invested of £25,000 less the income tax relief obtained of £12,500.
Clearly investors will hope that they are not in a capital loss position but where this does happen, the allowable loss qualifies for relief against either gains or income. The facility to use a capital loss against income is only available in certain specified circumstances which include a capital loss on SEIS. It can be used in the year of the loss and/or the preceding year to relieve net income and can therefore potentially save tax at the individual's highest rate of tax.

A bonus exemption

There is also an additional exemption where assets are disposed of at a gain in that year and funds equal to the amount of the gain are invested in SEIS shares. Reinvestment relief is available at 50% of the matched gain where the proceeds are invested in SEIS shares.
Where only part of the gain is invested in such shares then only that part is exempt. The maximum gain to be relieved is capped at £100,000. Further, this relief will only be allowed where the investment also qualifies for income tax relief and a claim is made. If for any reason the SEIS relief is withdrawn on the shares then the gain will be reinstated.

Example

Isaac sells some more quoted shares in 2016/17 for £200,000 making a gain of £80,000. He invests £80,000 of the proceeds in new shares which qualify under SEIS. He will be able to claim a reduction of £40,000 (being 50% of the amount invested in SEIS) in the chargeable gain on the shares.

Comparison to EIS

SEIS supplements the long established EIS scheme. Some aspects of both schemes are similar but there are also key differences. These are not considered in detail here, however, consider the position of the individual investor. Under EIS those investing up to £1 million receive income tax relief at up to 30%. From a tax relief perspective on investments up to £100,000, the SEIS is more favourable but it clearly cannot be used for larger investments.

How we can help

SEIS compliments the EIS and related Venture Capital Trust investment schemes as it may be an alternative way of attracting funds at a time when it is still difficult to obtain finance from traditional sources such as banks. Great care will be required to ensure that all opportunities to use it are obtained for investor and qualifying company alike. Please do contact us if this is an area of interest.

STATUTORY RESIDENCE TEST

The concept of residence in the United Kingdom is fundamental to the determination of UK tax liability for any individual. For over 200 years the term 'residence' has never been defined in our tax laws and the issue of interpretation in any situation has been dependent upon considering case law and HMRC practice. From 6 April 2013 a Statutory Residence Test (SRT) has been introduced into legislation.

The SRT provides, through a series of tests, a definitive process to determine the UK residence status of any individual. That status applies for income tax, capital gains tax and inheritance tax purposes.

Once that status has been established then other rules determine the extent of an individual's liability to UK taxes. These other rules may include not just UK statute but also double tax treaties with other countries. These rules are not covered in this factsheet.

Counting days

The SRT relies heavily on the concept of counting 'days of presence' in the UK in the relevant tax year and so it is important to understand what this term means. The basic rule is a day of presence is one where the individual was in the country at midnight. There are two exceptions to this:

• the individual only arrives as a passenger on that day and leaves the UK the next day and in between does not engage in activities that are to a substantial extent unrelated to their passage through the UK and

• the individual would not be present in the UK at the end of the day but for exceptional circumstances beyond their control which prevent them from leaving and they would intend to leave as soon as those circumstances permit.

A further rule applies where an individual has been resident in the UK in at least one of the three previous tax years and has at least three 'ties' with the UK. It will then be necessary to add to the total of 'midnight days' the excess over 30 of any other days where the individual spent any time at all in the UK.

Three tests

The SRT is based on a series of three tests which must be considered in a particular order in every case. The tests are applied to the facts in the 'relevant tax year' i.e. the year for which residence status is being determined:

• first consider the Automatic Overseas Test (AOT). If this test is satisfied the individual will be not resident in the UK in the relevant tax year and no further tests are required. If the AOT is not satisfied then move on to

• the Automatic Residence Test (ART). If this test is satisfied the individual will be resident in the UK in the relevant tax year and no further tests are required. If the test is not satisfied move on to

• the Sufficient Ties Test (STT). If this test is satisfied the individual will be resident in the UK and if it is not satisfied they will be not resident.

The detailed conditions relating to each test are discussed below. There are further tests which only apply if the individual has died in the year but these are not dealt with here.

The Automatic Overseas Test (AOT)

There are three possible tests in the AOT and if an individual satisfies any one of these they will be not resident in the UK

in the relevant tax year. The conditions are that the individual:

• was resident in the UK in one or more of the previous three tax years and they are present in the UK for fewer than 16 days in the relevant tax year

• was not resident in the UK in all of the previous three tax years and they are present in the UK for fewer than 46 days in the relevant tax year

• works full time abroad for at least a complete tax year and they are present in the UK for fewer than 91 days in the relevant tax year and no more than 30 days are spent working (currently defined as more than 3 hours) in the UK in the tax year.

The first two tests are simply based on a day count and ignore the existence of other factors such as other links with the UK like the availability of accommodation in the UK.

There are conditions for the third test which need to be considered by those planning to go abroad to work either as an employee or on a self-employed basis. Obviously the days of presence and the working days must be considered carefully. In addition it should be noted that:

• full time work is defined as an average of 35 hours a week over the whole period of absence. Account can be taken of a range of factors such as holidays and sick leave to effectively improve the average

• working days in the UK do not have to be the same as the days of presence so a day where there is UK work and the individual leaves the UK before the end of the day may well count as a working day

HMRC will expect evidence to be provided if it is claimed that the time limit for a working day has not been exceeded.

The way in which the subsequent tests are structured mean that it is really important that a working expatriate can pass the AOT and be treated as not resident otherwise they are likely to find a real problem under the later tests.

The Automatic Residence Test (ART)

If the AOT is not met then the individual must next consider the conditions of the ART. This test will be satisfied if any of the following apply to the individual for the relevant tax year:

• they are present in the UK for 183 days or more in a tax year

• they have a home in the UK and they are present in that home on at least 30 separate days in the relevant year.

There must be a period of at least 91 consecutive days during which the home is available and at least 30 of those days must fall within the relevant tax year

• they carry out full time work in the UK for a period of 365 days during which at least 75% of their time is spent in the UK.

The 'home' test may be of real significance because, if that test applies, the number of days in the UK is irrelevant. The legislation makes clear that a home can be a building or part of a building and can include a vessel or vehicle. It must have a degree of permanence or stability to count as a home but specific circumstances may have to be considered. If the individual also has a home abroad, the second test above will not apply if the person spends more than 30 days at the home abroad in the tax year.

The Sufficient Ties Test

If no conclusive answer to residence status has arisen under the first two tests, the individual must then look at how the STT applies to them for the relevant tax year. The test will be satisfied if the individual has sufficient UK ties for that year. This will depend on two basic conditions:

• whether the individual was resident in the UK for any of the previous three tax years and

• the number of days the individual spends in the UK in the relevant tax year.

The STT reflects the principle that the more time someone spends in the UK, the fewer connections they can have with the UK if they want to be not resident. It also incorporates the principle that residence status should adhere more to those who are already resident than to those who are not currently resident.

Under the STT an individual compares the number of days of presence in the UK against five connection factors. Individuals who know how many days they spend in the UK and how many relevant connection factors they have can then assess whether they are resident.

The five ties are summarily set out as:

• a family tie - this will apply if either a spouse or minor child is resident in the UK in the relevant tax year

• an accommodation tie - where there is accommodation which is available for at least 91 days in the tax year and is actually used at least once

• a work tie - where there are at least 40 working days of three hours or more in the UK in the relevant tax year

• a 90-day tie - more than 90 days were spent in the UK in either or both of the two immediately preceding UK tax years and

• a country tie - more time is spent in the UK than in any other single country in the relevant tax year.

An individual who has been resident in the UK in any of the three preceding tax years must consider all five ties and they will be resident if any of the following apply:

Days in UK	Number of ties sufficient to establish residence
16 - 45	at least 4
46 - 90	at least 3
91 - 120	at least 2
121 - 182	at least 1

An individual who has not been resident in any of the three preceding years must consider all the ties apart from the country tie and they will be resident in any of the following situations:

Days in UK	Number of ties sufficient to establish residence
46 - 90	all 4
91 - 120	at least 3
121 - 182	at least 2

Special rules for international transport workers

The SRT rules are adapted where an individual is an 'international transport worker' This is defined as someone who:

• holds an employment, the duties of which consist of duties to be performed on board a vehicle, aircraft or ship, while it is travelling or

• carries on a trade, the activities of which consist of the provision of services on board a vehicle, aircraft or ship as it is travelling.

In either case substantially all the journeys must be across international boundaries. The individual has to be present on board the respective carrier as it makes international journeys in order to provide those services.

An individual who has some duties on purely domestic journeys will still be regarded as within the definition if the international duties are substantial (probably at least 80%).

Where an individual falls within this group the implications for the SRT are (broadly) that the individual:

• cannot be non-UK resident on the grounds of working full-time overseas

• cannot be UK resident on the grounds of working full time in the UK and

• in considering the work day tie for the STT an international transport worker is regarded as doing more than three hours work where any journey that day commences in the UK and fewer than three hours on any other day.

Split year rules

The basic rule will be that if an individual satisfies the conditions of the SRT to be treated as resident for a part of the UK tax year then they are resident for the whole of that year. Special rules will apply in certain circumstances to allow a year of arrival or departure to be split into resident and not resident parts as appropriate. We shall be pleased to discuss whether your plans or circumstances will be eligible for such treatment.

Anti-avoidance rules

The government wants to ensure that individuals are not able to exploit the rules to become not resident for a short period during which they receive certain types of income or make capital gains. Basically an individual with a history of at least four out of the previous seven years as a sole UK resident will need to maintain not resident status for at least five UK tax years otherwise certain income and all capital gains made in the period of absence will become taxable in the UK in the next year in which they are resident.

How we can help

A change of tax residence is always a major decision and detailed advice is necessary. Please do contact us for any advice you may need.

TAXATION OF THE FAMILY

Individuals are subject to a system of independent taxation so husbands and wives are taxed separately. This can give rise to valuable tax planning opportunities. Furthermore, the tax position of any children is important. Marriage breakdowns can also have a considerable impact for tax purposes. We highlight below the main areas of importance where advance planning can help to minimise overall tax liabilities. It is important that professional advice is sought on specific issues relevant to your personal circumstances.

Setting the scene

Married couples

Independent taxation means that husbands and wives are taxed separately on their income and capital gains. The effect is that both have their own allowances, savings and basic rate tax bands for income tax, annual exemption for capital gains tax purposes and are responsible for their own tax affairs. The same tax treatment applies to same-sex couples who have entered into a civil partnership under the Civil Partnership Act.

Children

A child is an independent person for tax purposes and is therefore entitled to a personal allowance and the savings and basic rate tax band before being taxed at the higher rate. It may be possible to save tax by generating income or capital gains in the children's hands.

Marriage breakdown

Separation and divorce can have significant tax implications. In particular, the following areas warrant careful consideration:

- available tax allowances
- transfers of assets between spouses.

Tax planning for married couples

Income tax allowances and tax bands

Everyone is entitled to a basic personal allowance. This allowance cannot however be transferred between spouses except for the circumstances outlined below.

Transferable Tax Allowance or Marriage Allowance

From 6 April 2015 married couples and civil partners may be eligible for a new Transferable Tax Allowance.
The Transferable Tax Allowance also referred to as the Marriage Allowance will enable spouses and civil partners to transfer a fixed amount of their personal allowance to their spouse. The option to transfer is not available to unmarried couples.
The option to transfer is available to couples where neither pays tax at the higher or additional rate. If eligible, one partner is able to transfer 10% of their personal allowance to the other partner which is £1,150 for 2017/18 (£1,100 for the 2016/17 tax year).
Couples will be entitled to the full benefit in their first year of marriage. For those couples where one person does not use all of their personal allowance the benefit will be worth up to £230 in 2017/18 (£220 in 2016/17).
Eligible couples can apply for the marriage allowance at www.gov.uk/marriage-allowance. The spouse or partner with the lower income applies to transfer some of their personal allowance by entering some basic details. Those who do not apply via the government gateway will be able to make an application at a later date and still receive the allowance.

If either you or your spouse were born before 6 April 1935, then a married couple's allowance is available. This is given to the husband, although it is possible, by election, to transfer it to the wife.

Joint ownership of assets

In general, married couples should try to arrange their ownership of income producing assets so as to ensure that personal allowances are fully utilised and any higher rate liabilities minimised.
Generally, when husband and wife jointly own assets, any income arising is assumed to be shared equally for tax purposes. This applies even where the asset is owned in unequal shares unless an election is made to split the income in proportion to the ownership of the asset.
Married couples are taxed on dividends from jointly owned shares in 'close' companies according to their actual ownership of the shares. Close companies are broadly those owned by the directors or five or fewer people. For example if a spouse is entitled to 95% of the income from jointly owned shares they will pay tax on 95% of the dividends from those shares. This measure is designed to close a perceived loophole in the rules and does not apply to income from any other jointly owned assets.
We can advise on the most appropriate strategy for jointly owned assets so that tax liabilities are minimised.

Capital gains tax (CGT)

Each spouse's CGT liability is computed by reference to their own disposals of assets and each is entitled to their own annual exemption of £11,300 for 2017/18 per annum.
Some limited tax savings may be made by ensuring that maximum advantage is taken of any available capital losses and annual exemptions.
This can often be achieved by transferring assets between spouses before sale - a course of action generally having no adverse CGT or inheritance tax (IHT) implications. Advance planning is vital, and the possible income tax effects of transferring assets should not be overlooked.
Further details of how CGT operates are outlined in the factsheet Capital Gains Tax.

Inheritance tax (IHT)

When a person dies IHT becomes due on their estate. Some lifetime gifts are treated as chargeable transfers but most are ignored providing the donor survives for seven years after the gift.
The rate of inheritance tax payable is 40% on death and 20% on lifetime chargeable transfers. The first £325,000 is not chargeable and this is known as the nil rate band.
Transfers of property between spouses are generally exempt from IHT. Rules were introduced which allow any nil-rate band unused on the first death to be used when the surviving spouse dies. The transfer of the unused nil-rate band from a deceased spouse, irrelevant of the date of death, may be made to the estate of their surviving spouse who dies on or after 9 October 2007.
The amount of the nil-rate band available for transfer will be based on the proportion of the nil-rate band which was unused when the first spouse died. Key documentary evidence will be required for a claim, so do get in touch to discuss the information needed.

IHT residence nil rate band

An additional nil rate band is being introduced for deaths on or after 6 April 2017 where an interest in a main residence passes to direct descendants. The amount of relief is being phased in over four years; starting at £100,000 in the first year and rising to £175,000 for 2020/21. For many married couples and

civil partners the relief is effectively doubled as each individual has a main nil rate band and each will potentially benefit from the residence nil rate band. The additional band can only be used in respect of one residential property which does not have to be the main family home but must at some point have been a residence of the deceased. Restrictions apply where estates are in excess of £2 million.

Where a person dies before 6 April 2017, their estate will not qualify for the relief.

A surviving spouse may be entitled to an increase in the residence nil rate band if the spouse who died earlier has not used, or was not entitled to use, their full residence nil rate band. The calculations involved are potentially complex but the increase will often result in a doubling of the residence nil rate band for the surviving spouse.

The residence nil rate band may also be available when a person downsizes or ceases to own a home on or after 8 July 2015 where assets of an equivalent value, up to the value of the residence nil rate band, are passed on death to direct descendants.

From April 2017 we have three nil rate bands to consider. The standard nil rate band has been a part of the legislation from the start of IHT in 1986. In 2007 the ability to utilise the unused nil rate band of a deceased spouse was introduced enabling many surviving spouses to have a nil rate band of up to £650,000. By 6 April 2020 some surviving spouses will be able to add £350,000 in respect of the residence nil rate band to arrive at a total nil rate band of £1 million.

However this will only be achieved by careful planning and, in some cases, it may be better for the first deceased spouse to have given some assets to the next generation and use up some or all of the available nil rate bands.

For many individuals, the residence nil rate band will be important but individuals will need to revisit their wills to ensure that the relief will be available and efficiently utilised.

Gifts

A gift for family maintenance does not give rise to an IHT charge. This would include the transfer of property made on divorce under a court order, gifts for the education of children or maintenance of a dependent relative.

Gifts in consideration of marriage are exempt up to £5,000 if made by a parent with lower limits for other donors.

Small gifts to individuals not exceeding £250 in total per tax year per recipient are exempt. The exemption cannot be used to cover part of a larger gift.

Gifts which are made out of income which are typical and habitual and do not result in a fall in the standard of living of the donor are exempt.

Payments under deed of covenant and the payment of annual premiums on life insurance policies would usually fall within this exemption.

Children

Use of allowances and lower rate tax bands

It may be possible for tax savings to be achieved by the transfer of income producing assets to a child so as to take advantage of the child's personal allowance.

This cannot be done by the parent if the annual income arising is above £100. The income will still be taxed on the parent. However, transfers of income producing assets by others (eg grandparents) will be effective.

A parent can however allow a child to use any entitlement to the CGT annual exemption by using a ‘bare trust’.

Child Tax Credit

A Child Tax Credit (CTC) is available to some families. To see whether you are entitled to claim visit www.gov.uk/child-tax-credit.

Junior Individual Savings Account (Junior ISA)

The Junior ISA is available for UK resident children under the age of 18 who do not have a Child Trust Fund account. Junior ISAs are tax advantaged and have many features in common with existing ISAs. They are available as cash or stocks and share based products.

High Income Child Benefit Charge

A charge applies to a taxpayer who has adjusted net income over £50,000 in a tax year where either they or their partner are in receipt of Child Benefit for the year. Where both partners have adjusted net income in excess of £50,000 the charge will apply to the partner with the higher income.
The income tax charge will apply at a rate of 1% of the full Child Benefit award for each £100 of income between £50,000 and £60,000. The charge on taxpayers with income above £60,000 will be equal to the amount of Child Benefit paid.
Child Benefit claimants can elect not to receive Child Benefit if they or their partner do not wish to pay the charge.

Example

The Child Benefit for two children amounts to £1,788.
The taxpayer's adjusted net income is £54,000.
The income tax charge will be £715.
This is calculated as £17.88 for every £100 above £50,000.
For a taxpayer with adjusted net income of £60,000 or above the income tax charge will equal the Child Benefit.

Marriage Breakdown

Maintenance payments

An important element in tax planning on marriage breakdown used to involve arrangements for the payment of maintenance. Generally no tax relief is due on maintenance payments.

Asset transfers

Marriage breakdown often involves the transfer of assets between husbands and wives. Unless the timing of any such transfers is carefully planned there can be adverse CGT consequences.
If an asset is transferred between a husband and wife who are living together, the asset is deemed to be transferred at a price that does not give rise to a gain or a loss. This treatment continues up to the end of the tax year in which the separation takes place.
CGT can therefore present a problem where transfers take place after the end of the tax year of separation but before divorce, although gifts holdover relief is usually available on transfers of qualifying assets under a Court Order.
IHT on the other hand will not cause a problem if transfers take place before the granting of a decree absolute on divorce. Transfers after this date may still not be a problem as often there is no gratuitous intent.

How we can help

Some general points can be made when planning for efficient taxation of the family.
Any plan must take into account specific circumstances and it is important that any proposed course of action gives consideration to all areas of tax that may be affected by the proposals.
Tax savings can only be achieved if an appropriate course of action is planned in advance. It is therefore vital that professional advice is sought at an early stage. We would welcome the chance to tailor a plan to your own personal circumstances so please do contact us.

VENTURE CAPITAL TRUSTS

Venture Capital Trusts (VCTs) are complementary to the Enterprise Investment Scheme (EIS), in that both are designed to encourage private individuals to invest in smaller high-risk unquoted trading companies affected by the equity gap. While the EIS requires an investment to be made directly into the shares of the company, VCTs operate by indirect investment through a mediated fund. In effect they are very like the investment trusts that are obtainable on the stock exchange, albeit in a high-risk environment.

What is a VCT?

VCTs themselves are quoted companies which are required to hold at least 70% of their investments in shares or securities that they have subscribed for in qualifying unquoted companies. VCTs have a certain time period in which to meet the percentage test.
Other conditions are:

- they must distribute 85% of their income
- they must have a spread of investments with no single holding accounting for more than 15% of the value of total.

VCTs are exempt from tax on their capital gains and there is no relief for capital losses.

Reliefs available to investors

Income tax relief of 30% is currently available on subscriptions for VCT shares up to a limit per tax year of £200,000. To qualify for income tax relief the shares must be held for a minimum of five years.
Investors are exempt from tax on any dividends received from a VCT although the credits are not repayable.

Capital gains arising on disposal of the shares are also exempt and for this relief, there is no minimum period of ownership. There is no relief for any capital losses.

Qualifying companies which a VCT can invest in

The definition of a qualifying company for VCT purposes is very similar to that applying for EIS. The company:

- must be unquoted, although shares on the Authorised Investment Market (AIM) are deemed unquoted for this purpose. They may become quoted later.
- must not deal in land, leased assets or financial, legal or accountancy services. In addition it must not be a trade that has a large capital aspect to it, such as property development, farming, hotels or nursing homes.

Over the years, governments make amendments to what are regarded as qualifying companies for a VCT to invest in. The thrust of the changes is to ensure well-targeted support for investment into small and growing companies, with a particular focus on innovative companies.

How we can help

It is not possible to cover all the detailed rules in a factsheet of this nature. If you are interested in investing in a VCT please contact us for further information.

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