TAX BRIEFING

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GAINS FROM OFF-PLAN HOMES

If you bought your home brand new and 'off-plan' you may realise a significant capital gain when you sell that property.

This is not a problem if you occupied the property as your main home for your entire period of ownership. In that case principal private residence relief should cover the whole of the capital gain and there will be no tax to pay on the disposal. However, an issue arises if there was a delay between the date you acquired the property and the date you moved in.

For newly built properties there can be a considerable delay between exchanging contracts to purchase (generally regarded as the acquisition date for any property) and the completion date when you move in. As HMRC have insisted that any gain is apportioned equally to every day of ownership, even when the property is not finished, the taxable gain attributed to the period when the building was incomplete can be considerable.

Fortunately, this problem has been resolved by the Court of Appeal which has ruled that the ownership period starts when the purchaser acquires full legal rights to occupy the property. This means the period from signing a contract to buy (the contract exchange date) to the date the owner is given the keys is not subject to tax.

If you have already paid capital gains tax as HMRC argued the gain on your half-built new home was taxable, you may be able to claim a refund of that tax.

CAR BENEFIT CONFUSION

From 6 April 2020 the calculation of company car taxable benefits will be changed to favour electric and hybrid vehicles.

This is good news for some company car drivers. However, due to a switch in the methods used for measuring vehicles' CO2 emissions, there will be two different tables to work out the taxable benefit of a company car.

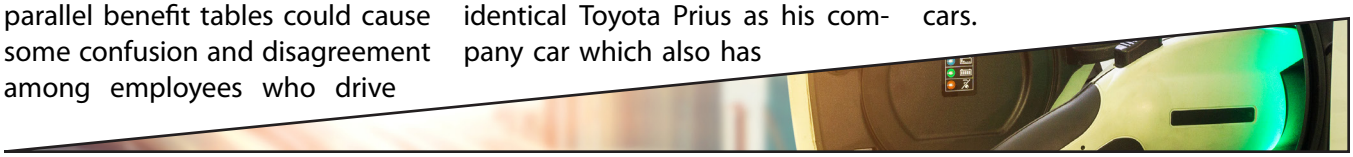
Cars first registered on or after 6 April 2020 will have lower taxable benefits at every level of emissions than cars registered before that date. However, the 'new car' tables will be adjusted to catch up with the 'old car' benefits by 2023. These parallel benefit tables could cause some confusion and disagreement among employees who drive similar company cars but that were registered on different dates.

Example

Tim drives a Toyota Prius plug-in which has a list price of £31,000 and emissions of 28g/km. In 2019-20 the benefit of driving this hybrid electric/petrol car is calculated as 16% of its list price: £4,960. In 2020-21, as it has a zero-emissions range of 39 miles, the taxable benefit drops to 12% of the list price: £3,720.

Tim's colleague Jim opts to take an identical Toyota Prius as his company car which also has a list price of £31,000. Jim's Toyota is registered on 6 April 2020 so the taxable benefit in 2020-21 is 10%. Jim pays tax on £3,100 on the benefit of driving his new Toyota, but Tim pays tax on £3,720 for the benefit of driving his slightly older car.

In 2021-22 Jim is taxed on 11% of his car's list price: £3,410 while Tim is still paying tax on £3,720. In 2022-23 Jim's taxable benefit rises to 12% of the list price so Tim and Jim are taxed on the same amount in respect of their identical company cars.



OFFSHORE INVESTMENT FUNDS

HMRC are writing to taxpayers where there is information to suggest those individuals have invested in an offshore collective investment fund.

If you hold any amounts in offshore investment funds, however small, you may have to declare the income or gains received on your tax return.

If your offshore fund is held within the ISA wrapper, the income and gains will be free of tax and should not be included on your tax return.

Check whether you need to amend any previous tax returns to declare ERI or amounts received in earlier periods

In other circumstances the tax treatment will depend on whether the fund is an 'approved offshore reporting fund' or a 'non-reporting fund'. The financial adviser who advised you on this investment should be able to tell you which type of fund you hold.

If you hold a 'reporting fund' you should report the interest, dividends and gains you actually receive. In addition there may be profits from the fund which are not distributed to investors called excess reportable income (ERI). You must report any ERI on your tax return for the tax year which includes the fund distribution date. Check whether you need to amend any previous tax returns to declare ERI or amounts received in earlier periods. We can help you with such amendments.

If you hold a 'non-reporting fund' you must declare all the distributions and gains you received on the foreign income pages of your tax return. We can help you with this.

MTD DIGITAL LINKS

Making tax digital (MTD) for VAT requires you to do two things:

- record data concerning your sales and purchases digitally; and
- transfer that data via digital links to the MTD-enabled software which is used to submit the VAT return.

Many business systems contain pinch points where different software programmes or spreadsheets do not communicate so summary totals need to be transferred by hand (retyped) or by copying and pasting. This non-automated data transfer must be replaced by a digital link to comply with the MTD regulations.

HMRC have allowed businesses a one-year concession from the digital links requirement. This means that you can transfer VAT data manually and there will be no penalties for doing so within this 'soft-landing' period. The soft-landing period ends at the start of your first accounting period which commences on or after 1 April 2020, or 1 October 2020 if your business was granted a deferred start date for MTD.

However there is now the possibility of an extension to the digital link concession if changing your accounting system to insert digital links is unachievable within the soft-landing period.

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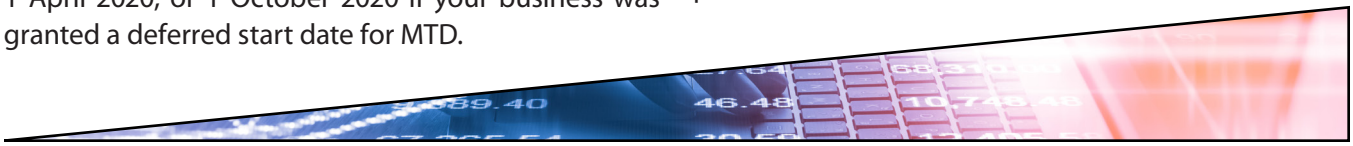
You need to apply to HMRC for the extension to be granted, giving reasons why it is needed and providing a timetable of when those digital links will be inserted. You will also have to provide a map of the VAT recording system which highlights the points where a digital link is missing. We can help you with that.

Any extension granted to the digital links concession can only last for a maximum of one year and must be applied for before the current soft-landing period expires.



AVOID TAX TRAPS ON SETTING UP

Successful entrepreneurs often move from one business project to another.

If you are about to start up a new business having closed down an old one, be careful not to fall into the phoenix trap. This is when one company is liquidated, so the cash accumulated in the company is distributed to the shareholders and subject to capital gains tax. Then the same owner starts a new business running a very similar trade, only to close that after a few years and phoenix again.

If you are planning to sell your company and start another, please talk to us first so that we can steer you out of the phoenix trap

The targeted anti-avoidance rule (TAAR) can ruin this strategy as the accumulated cash distributed on liquidation is taxed as income rather than as a gain.

The TAAR applies when the person who receives the distribution starts up a similar trade or activity (not necessarily in a company) within two years of the liquidation. It must also be reasonable to assume that the main purpose, or one of the main purposes, behind winding-up the company was to reduce the owner's income tax liability.

HMRC can argue that the TAAR may also apply when the original company is sold rather than liquidated by the owners.

There will be a range of circumstances between selling the company with no intention to work in the area again and disposing of the assets and trade of the company then selling the cash-rich shell to a third party to liquidate. In the latter case HMRC may invoke the general anti-abuse rule (GAAR) to counter the perceived tax avoidance.

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WHERE ENTREPRENEURS' RELIEF FALLS SHORT

When you sell your business you can expect to pay capital gains tax (CGT) on any gains you make.

Currently CGT is payable at 10% (if within your basic rate band for income tax) or 20% on such gains. But the 10% rate can also apply to gains of up to £10m if entrepreneurs' relief (ER) applies.

To qualify for ER the business must have been trading for at least two years before the sale date. A business is trading when most or all of its activities relate to a trade rather than to investments.

The focus for ER is on the effort put in to produce the trading or investment income, rather than the proportion of turnover which is generated by the investments compared to the trade.

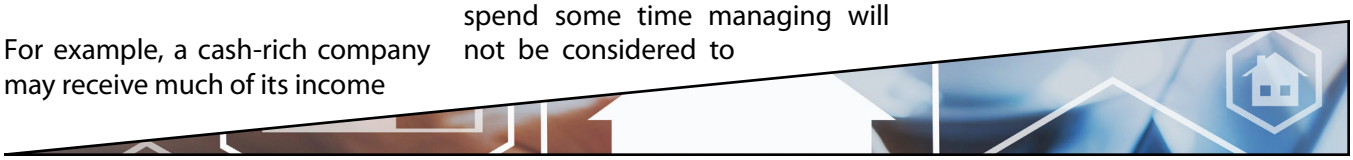
For example, a cash-rich company may receive much of its income from passive investments but the directors spend all of their time trying to drum up new sales leads. As long as the majority of the activities of the company (expenses and time spent) relate to the trade, the company will be considered to be trading even if most of the income arises from the passive investments.

If you are thinking of selling your business, ask us to check whether ER will apply before you agree the terms of the sale

By contrast, a company which owns a let property that the directors spend some time managing will not be considered to be a trading company unless there is some other activity within the company which can be classified as a trade. Letting a property is only regarded as a trade if there are considerable activities around receiving and catering for those who pay the rent.

Furnished holiday accommodation let on a commercial basis is regarded as a trade, as is a bed and breakfast business or a hotel. However letting an industrial unit is not generally treated as a trading activity.

If you are thinking of selling your business, ask us to check whether ER will apply before you agree the terms of the sale.



TAX RELIEF FOR INSTALLATION COSTS

When you buy a large item of plant or machinery you may need to make alterations to your land or buildings in order to install the item.

For example the equipment may require a new concrete base or a specially protected electrical circuit.

The cost of installing equipment is allowed as part of the capital allowances claim for the item. However in the past HMRC have resisted giving capital allowances for the cost of alterations to existing land or buildings where equipment is constructed on the site where it will be used. This is a problem in circumstances where new equipment must be constructed onsite as it is too big to transport in one piece.

The Upper Tax Tribunal has recently ruled that the cost of installing equipment includes constructing an asset in the location where it will be used. This means that if your business incurs costs on installing equipment, alterations to the land and the cost of erecting the equipment will now qualify for capital allowances.

You may be able to submit a claim for capital allowances arising from costs incurred in an earlier period that were previously disallowed by HMRC. We can help you with this.

VAT GROUPS

Groups of companies can apply to HMRC to operate as a VAT group so that transactions between those companies are ignored for VAT purposes.

The group will submit one VAT return covering the sales and purchases of all members, which is a big administrative saving. The main disadvantage of a VAT group is that all members are jointly and severally liable for the VAT debts of any member of the group.

If you form a new company to run alongside your existing companies it is important to bring that company into the VAT group from the date it is first registered for VAT. This requires two extra forms: VAT50 and VAT51 to be completed. Do not assume that because the new company is wholly owned by another member of the corporate group that it automatically joins the VAT group - it does not.

Some groups of companies are headed-up by a partnership, or commonly owned by an individual. Since 1 November 2019 it has been possible for those non-corporate organisations or individuals to join the VAT group with the companies they control.

However the non-corporate head of the group must operate a trade on its own account and be established for business purposes in the UK. If a holding company controls the other companies in the group it does not have to carry on a trade in its own name.

TRADE SLOWING DOWN

If your business is not making sales but you are still incurring costs, HMRC may refuse to repay the input VAT on purchases and ask you to cancel your VAT registration voluntarily as there are no business activities. This is a drastic solution as you will lose your VAT number. If your trade picks up again later, you will have to reregister for VAT and be allocated a new VAT number. There may also be VAT liabilities to pay if you have reclaimed VAT on large building costs under the capital goods scheme.

As an alternative to deregistering altogether, you could keep your business within the VAT system and retain its VAT number by joining the VAT flat rate scheme (FRS). You cannot reclaim input VAT while you are within the FRS although there is an exception for VAT on purchases of capital goods which cost £2,000 or more.

A business can join the FRS at the beginning of the VAT period after submitting its FRS application unless HMRC agree an earlier date. You can leave the FRS on any day, even in the middle of a VAT period, so joining the FRS could be a temporary solution to your stagnant trade problem.