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Business Update

The evolving world of Real Time Information (RTI)

Since April 2013 almost all employers must report payroll information online to HMRC when or before any employee is paid. This information includes details of employees, their pay, tax and national insurance deductions.

HMRC had previously recognised that some small employers who paid employees weekly, or more frequently, but who only processed their payroll monthly, may have needed longer to adapt to reporting PAYE information in real time. As a result they had agreed a temporary relaxation of reporting arrangements for small businesses with fewer than 50 employees. This allowed small businesses who found it difficult to report every payment to employees at the time of payment, to instead send the information to HMRC by the date of their regular payroll run but no later than the end of the tax month (5th).

This was originally to apply up to 5 October 2013. However, HMRC have announced that they are planning to extend the temporary extensions to 5 April 2014. After the relaxation period ends all employers will be required to report PAYE in real time each time they pay their employees.

If you feel that you could benefit from this temporary extension please contact us for further advice.

AUTUMN 2013

Battling with property

It is easy to assume that if you build up a successful unincorporated business that you will be entitled to Entrepreneurs' Relief (ER) on disposal and a 10% tax liability on gains up to £10 million. However, this is not always the case so understanding what qualifies is important.

An individual must have ownership of a business for one year leading to a qualifying material disposal. Ownership means either you are a sole trader or you have a partnership interest including membership of a Limited Liability Partnership. Other criteria for qualification apply with regard to companies and their shareholders but these are not considered in this article.

Trading businesses only

Only trading businesses qualify for ER. This means that ER will mainly be due on the gains arising from property used for trade purposes and business goodwill. Where there are assets held as investments then those will not be eligible for the relief. This means that a general property investment business does not qualify even though this may be how you earn your livelihood through active management of your properties. This applies whether the property is commercial or residential. Certain property based businesses may qualify as a trading business such as a hotel or caravan site. In addition, an exception exists for residential properties which qualify under the special rules for Furnished Holiday Lettings (FHL).

Exclusive use?

Strangely there is no specific law requirement to disqualify part of the gain on an asset where there has been some other use of the trading asset during the period of ownership. However, an adjustment is required where the disposal is classed as an associated disposal. The distinction is that an associated disposal is where the property asset is owned personally and is used by a trading partnership rather than being held within the partnership business.

It therefore appears that full ER may be available on an asset which, at the time of disposal, is not held as an investment but is owned for the purpose of the trade (and the trade has been carried on for the requisite one year period). An example could be of a property originally used as an investment property which has subsequently been used in a trade, for example a residential property which then subsequently qualifies as a FHL.

If you are interested in reviewing your ER position do contact us to for advice on securing this valuable relief.

Careful with cars

The provision of an employer provided car (often referred to as a company car) is still valued by recipient employees and directors. However, the increasing tax and national insurance costs to the employee and employer respectively have driven employers to consider alternative arrangements to provide cars to their employees.

In a recent case a company entered into leasing agreements with its employees. The employees paid a market rate rent for the exclusive use of the car. The company also reimbursed employees for business mileage travelled at the standard HMRC rates for employees who use their own car for business purposes.

HMRC argued that even though market rate rents were being paid by the employees, the arrangements still gave rise to a taxable benefit as the car was essentially being provided by the employer. If this was the position then the mileage rates paid would also be considered excessive with a resulting tax charge to the employees. This is because the acceptable tax free mileage rate for an employer provided car is much lower than the standard rates for an employee owned car.

The company appealed to the First Tier Tribunal on a number of grounds. Firstly, they argued that the car benefit charge can only apply if a car is made available to an employee, without any transfer of the property in it. The Tribunal agreed that as a result of the lease agreements there was a transfer of the property in the cars to the employees. Secondly, the car benefit charge can only apply if there is an actual benefit provided to an employee. As the employees were paying market rate rents for the cars there was no benefit provided to the employees. The Tribunal agreed with these arguments.

As regards the contention that the mileage rates were too high as the cars were company cars, the Tribunal did not agree with HMRC as the cars were not company cars. As a result the Tribunal allowed the taxpayers' claims for relief from tax for the mileage allowance payments.

The key tax decisions made in this case are being appealed by HMRC to the Upper Tribunal so whilst the first round has gone to the taxpayers the fight is not yet decided.

If you would like to talk through any concerns you may have surrounding the provision of company cars to employees please do not hesitate to contact us.

Occupation? Documentation?

The capital gains tax (CGT) exemption for gains made on the sale of your home is one of the most valuable reliefs from which many people benefit during their lifetime.

However, only a property occupied as a residence can potentially qualify for the exemption. For example, an investment property in which you have never lived would not qualify. The term occupied as a residence requires a degree of permanence so that living in a property for say, just two weeks with a view to benefiting from the exemption is unlikely to qualify.

In practice HMRC look for the 'quality rather than the quantity of residence' and look to establish that the dwelling must have become the owner's home. Examples can include:

- utility bills demonstrating usage
- financial correspondence
- entertaining friends or family in the property
- moving own furniture, pictures or ornaments into the property
- undertaking work on the property.

But what is the position if you have more than one residence?

It is increasingly common for people to own more than one residence. However, an individual can only benefit from the CGT exemption on one property at a time. In the case of a married couple (or civil partnership), there can only be one main residence per couple.

Where an individual has two (or more) residences then an election can be made to choose which should be the one to benefit from the CGT exemption on sale. Note that the property need not be in the UK to benefit although foreign tax implications may then need to be brought into the equation.

Get the paperwork right...

The election must normally be made within two years of a change in the number of residences. Choosing which property should benefit is not always easy since it depends on which is the more likely to be sold and which is the more likely to show a significant gain. Missing the two year time limit can mean that HMRC will decide which property was the main residence, on any future sale.

Deemed residences

One area to watch out for is 'deemed residences'. Take for example Kevin who lives in Essex and owns a house there, but gets a new job in Leicestershire. He rents a property in Leicestershire on an assured shorthold tenancy and returns to Essex every weekend.

Kevin has an interest in the property in Leicestershire as he has a tenancy and needs to consider making the election. If Kevin had only been occupying the house in Leicestershire under licence for example, being given permission from say a friend, or if he had been staying in a hotel, he would not be treated as having an interest and an election would not be necessary.

It is quite likely that Kevin will not have appreciated the fact that he should make an election. The issue then is based on the facts, which could mean that the Leicestershire property is determined as his main residence.

The result of this would be that the only residence likely to give rise to a gain on disposal would not attract relief. However, help may be available from HMRC using a concession which allows an extension to the two year time limit in circumstances where:

- an individual has or is treated as having more than one residence and
- their interest in each of them, or in each of them except one, has no more than a negligible capital value on the open market (eg a weekly rented flat, or accommodation provided by an employer) and
- the taxpayer was unaware that such an election could be made.

In such cases the election can be made within a reasonable time of the individual first becoming aware of the possibility of making an election, and it will be regarded as effective from the date on which the individual first had more than one residence.

As you can see there are traps for the unwary. If you are concerned that this could affect you and need further advice please contact us.

A motoring nightmare

Over recent years the issue of the self-employed individual claiming tax relief on travel expenses has been a constant area of challenge by HMRC. This is particularly the case where the individual undertakes both work at home and is considered to have another business base. A recent case won by HMRC illustrates that this is very much a live issue, particularly for the self-employed professional.

The taxpayer, a medical professional, has so far suffered a 7 year enquiry from HMRC and 3 Tribunal hearings over his business mileage claims. The Tribunal accepted that the taxpayer has a dedicated office in his home which is necessary for his professional activity. However, it did not accept that home should be treated as the starting point for calculating business mileage for regular and habitual journeys in connection with his private practice work.

The facts

The taxpayer specialises in the healthcare of elderly people and is employed at two hospitals in South London. Additionally, he holds weekly outpatient sessions at two private hospitals. He maintained that his headed paper showed his home as the correspondence address and that paperwork was sent to him there by health insurance companies. Emails were accessed at home as well.

He would generally undertake a fact finding consultation at either the patients home or at the private hospitals where he would hire a consulting room. Following the consultation he would prepare a treatment plan in his home office and would continue to monitor and care for the patient. Patients were not examined in his home office.

The issues

HMRC enquired into the taxpayer's typical weekly journeys to support his 65% business mileage claim. Two regular journeys were identified by HMRC:

- the mileage between the NHS hospitals and the private hospitals and
- the mileage from home to the private hospitals.

HMRC sought to disallow these as business journeys and proposed to reduce his business mileage claim to 6%.

The taxpayer's argument was that the business base should be regarded as where the business was run and not the place where the professional services were carried out. He stated that his home was clearly the business base so there was no non-business purpose in the travel between the home and the private hospitals.

HMRC argued that travel to and from home and a place of work is not generally tax allowable, because the journey cannot be regarded as wholly and exclusively for business. The travel was not to various temporary sites as he was delivering his professional services at fixed sites on a regular basis.

As indicated earlier, although the Tribunal did accept that the taxpayer had a place of business at his home they considered that the travel from home to the private hospitals was not wholly and exclusively for business purposes. Rather, there was a dual purpose to the journeys as part of the object of the journeys must have been to maintain a home in a separate location from the private hospitals. The journeys between the NHS hospitals and the private hospitals were also regarded as not allowable on the basis that the object of the journey was to put the taxpayer into a place where he could carry on his business away from his place of employment. As a result, the travel was not an integral part of the business itself.

If you are concerned that the decision in this case could affect your claims for business mileage, please contact us for further advice.

When the type of business matters

The availability of Business Property Relief (BPR) for inheritance tax (IHT) is critically important as it potentially saves an individual 40% IHT on death (or for relevant trusts the 6% ten year anniversary charge). However, a key point in securing this valuable relief is that the business (unincorporated or company) must not be 'wholly or mainly of making or holding investments'. This requires a business to demonstrate that it is either a trading business or at least that the majority of its activities and/or assets are classed as trading rather than investment(s). Two important tax cases on BPR this year have focused on the specific issue of the property business.

The first concerned whether a single dwelling commercially rented out as a furnished holiday letting (FHL) qualified as a trading business. In that case the Upper Tribunal decided that such lettings are essentially investment businesses and therefore no BPR was available. The result being that 40% IHT became due. The second case considered the same question on the commercial letting of a large office building called Zetland House in London.

In the second case the building had been remodelled to provide smaller office units with more facilities and services to tenants to attract occupants particularly from computer, media and high tech businesses. This had resulted in the gross rent and service charges rising to around £2.4m, four times the level received ten years earlier. The building had a restaurant, gym, cycle arch, Wi-Fi, portage, 24 hour access, meeting rooms, media events, outdoor screens for viewing football matches and film shows as well as an art gallery area which therefore required additional staff to run it.

The problem

The HMRC stance in both cases can be summarised using the wording in the judgement from the FHL case 'that the holding of land in order to obtain an income from it is generally to be characterised as an investment activity'. However, other tax case law exists which considers that there is a spectrum consisting 'at one end of the exploitation of land by granting a tenancy coupled with sufficient activity to make it a business' and 'at the other end … while land is being exploited, the element of services means that there is a trade, such as running a hotel or a shop from premises.'

The lack of clear HMRC guidance over the years as to what activities and /or services are required to constitute a trade explains why there is a growth in these types of cases as both HMRC and taxpayers challenge the boundaries.

The decision

The Tribunal acknowledged that with Zetland House, the business activity was not simply the receipt of rent from let property. Services were being provided and other activities were being undertaken. The question was whether those activities elevated the business from mere ownership or investment into a business which would qualify for BPR.

After considering in detail all of the services and facilities at Zetland House the Tribunal noted that the provision of services and facilities to a property business will usually be ancillary to the main investment business and so determined that overall it did not qualify as a business for BPR. This is because the purpose of the activities is largely to improve the building and its fabric and to keep the occupancy rates high. The services provided were mainly of a standard nature aimed at maximising income through the use of short term tenancies.

If this is an area which may affect you please do contact us for further information and guidance.

Simpler income tax – flat rate expenses

In order to work out their taxable profits, businesses can deduct allowable business expenses from their taxable income. A new optional simplified system applies for 2013/14 onwards. This is available to all self-employed individuals whether operating as a sole trader or in partnership (excluding partnerships with company members). The new statutory rules will allow them to claim flat rate expense deductions instead of actual business expenses which can be more complex to calculate.

Flat rate expense deductions are only available for:

- business costs for vehicles
- business use of home
- private use of business premises as a home

As this is an optional scheme you can decide whether adopting it suits your business.

Business costs for vehicles

You will need to keep a record of business miles travelled. You will then be able to calculate your vehicle expenses using a flat rate for the business mileage instead of the actual costs incurred on buying and maintaining a vehicle.

How much can I claim?

Cars and goods vehicles

First 10,000 miles	45p per mile
Additional mileage	25p per mile

Motorcycles

24p per mile

All other travel expenses such as a train journey can be claimed in the normal way. One important point to note is that you do not have to use flat rates for all your vehicles but once you have chosen to use them for a specific vehicle, you must continue to use them for the business life of that vehicle. Additionally, if you have previously claimed capital allowances for a vehicle, you cannot use these mileage rates for it.

Example

Julie drives 15,000 business miles in 2013/14. She can claim the following deduction in her accounts instead of the actual vehicle running costs and capital allowance claim:

10,000 miles x 45p	£4,500
5,000 miles x 25p	£1,250
Total	**£5,750**

Business use of home

It is quite likely that a business owner will use their home for business purposes for example:

- maintaining business records at home
- marketing and time obtaining new business at home

A deduction can be claimed for the actual business proportion of utilities, repairs, mortgage, rent, telephone etc. This does though involve more record keeping and documentation than the flat rate expense option. The flat rate option provides a set allowance depending on hours worked at home as follows:

No. of hours per month business use	Flat rate per month
25 to 50	£10
51 to 100	£18
101 and more	£26

Note that you must work for 25 hours or more a month from home to use the fixed expense deduction facility.

Private use of business premises

Some businesses use their business premises as their home for example, a guesthouse or a pub. Some of the business premises expenses will be for personal use and you would normally have to work out the split between private and business use. With simplified expenses you can deduct a monthly flat rate for private use from total expenses and the rate will depend on how many people use the business premises each month as a home.

Number of people	Flat rate per month
1	£350
2	£500
3	£650

Example

Jenny runs a B&B and lives there during 2013/14. Her son Michael is at university for 9 months a year and returns home in the summer. The total premises expenses amount to £25,000 for the year.

The private use adjustment is calculated as follows:

Flat rate 9 months £350 per month	£3,150
Flat rate 3 months £500 per month	£1,500
Total adjustment	**£4,650**

Jenny can therefore claim £25,000 - £4,650 = £20,350.

Please contact us if you would like to discuss this further if you feel that this may be beneficial to you.