Amazingly simple....

2015/16

Tax Planning Bulletin

RAWLINSON & HUNTER

Despite the establishment of the Office of Tax Simplification in 2010, changes in legislation have continued apace and the UK tax system, far from becoming simple, has increased in volume and complexity. Changes in taxation may mean that prior tax mitigation strategies may no longer meet your and/or your family's needs effectively. Bespoke up to date advice is recommended to ensure that all relevant tax aspects are considered. As the end of the tax year approaches, this bulletin considers a range of planning ideas, some quite basic and others less so, but all designed to help you to optimise your tax position. For further information, please contact your usual Rawlinson & Hunter partner.

1 Income Tax

Utilising allowances and lower rate tax bands

1.1 Consider reducing your taxable income through charitable giving (see section 7) or making pension contributions (see section 3) if:

- Your income for 2015/16 is likely to be between £100,000 and £121,200 such that, if nothing is done, your personal allowance will be incrementally withdrawn and you will suffer a 60% marginal Income Tax rate.
- Your income for 2015/16 is likely to be between £50,000 and £60,000, such that, if nothing is done, you will be subject to the High Income Child Benefit Charge (in effect a claw back of child benefit received by you or your partner).

1.2 Is your spouse or civil partner making full use of their personal allowance (£10,600 for 2015/16) and lower rate tax bands? If not, provided a genuine absolute transfer can be effected, consider transferring/splitting ownership of income-producing assets or putting savings in joint names.

1.3 Apart from where there is a partnership, where spouses/civil partners own assets (other than close company shares and furnished holiday lets) jointly, for tax purposes the income is deemed to be split 50/50 regardless of the beneficial/legal ownership. Where 50/50 does not reflect reality a declaration can be made so the spouses/partners are taxed in accordance with the ratio of actual ownership. Where a 50/50 split is not beneficial it is important that the declaration is made in a timely manner.

1.4 Is there a family business? If so can paying a salary to your spouse/civil partner or children (provided they are old enough) be justified? Could the business justify paying employer pension contributions?

1.5 Consider the position of your children and grandchildren (and anyone else that you wish to provide for) who are not making full use of their Income Tax personal allowance, Capital Gains Tax (CGT) annual exemption and/or lower rate bands. Take advice to devise a lifetime giving strategy that is efficient across the various taxes. This could include:

- Gifting funds so family members can acquire income-producing assets that should also appreciate in value (providing scope to utilise their personal allowance, lower rate bands and their CGT annual exemption).
- If there is a family discretionary trust, distributions of income could be made to ensure the full usage of the personal allowances and lower rate bands of beneficiaries. Capital distributions might also be considered.

1.6 Take advice urgently if you think that you may have mistakenly overpaid tax in earlier tax years.

Reliefs that can reduce total income

1.7 Certain reliefs work by reducing an individual's total income. These reliefs can result in very significant tax savings. The savings achievable on a number of key reliefs are, however, limited by a cap (the higher of £50,000 and 25% of the taxpayer's total adjusted net income for the tax year).

1.8 The key reliefs impacted by the cap are: the offsetting against general income of trading losses, reliefs for certain interest payments (such as interest on a loan taken out to buy shares in a close company or to provide capital to a partnership) and income tax relief for capital losses on the disposal of shares in unlisted trading companies (though note that the cap does NOT apply where EIS or SEIS relief is attributable to the shares, which is another reason why those reliefs can be so valuable). Take advice if you think the cap may apply to you.

1.9 The cap does not apply when computing the Income Tax relief available with respect to charitable giving (see section 7) whether one is considering Gift Aid (gifts of cash) or gifts of qualifying property (land or qualifying securities).

2 Savings and Investments

Tax is only one of a number of considerations when making investments. Before any investment decision is made specific financial advice should be taken from someone with the appropriate regulatory standing.

General points

2.1 Consider the following tax mitigation or deferment strategies:

- Investing for capital growth - the 28% higher Capital Gains Tax rate is considerably lower than the 45% additional Income Tax rate.
- Wrapper products – these can provide a mechanism for tax deferral during times when tax rates are high. However, specific (and potentially penal) tax regimes can apply and specialist advice should be taken both prior to investment and before any encashment.

2.2 Certain companies have special purpose share schemes that in certain circumstances can provide tax benefits to investors by offering a choice between an income and a capital return on shares. Where the return offered is essentially the same value, legislation (effective from 6 April 2015) will mean that the value received will be taxed as income regardless.

2.3 Where you hold shares in unlisted trading companies, which have become worthless, consider whether you could make a claim for the loss against your income for the year (though note the potential impact of the cap on such reliefs – see 1.8).

2.4 The deadline to use your 2015/16 ISA allowance is 5 April 2016. The allowance for 2015/16 is £15,240 for the tax year and there are no restrictions on mix of cash/investments (that is the ISA can be entirely in cash, entirely in investments or a mix of both). Remember that whilst the income and gains arising in the fund are tax-exempt during your lifetime the value of your ISA investments will form part of your death estate for Inheritance Tax purposes.

2.5 For first time buyers consider saving using a “Help to Buy ISA”, as (with a £3,000 cap) the government boosts the amount saved by 25% (at the time the house is purchased your solicitor will apply for the bonus) provided a minimum of £1,600 is saved. With the exception of a permissible initial £1,200 lump sum the maximum amount that can be saved each month is £200. You can only have one “Help to Buy ISA” (you pay into the same one each tax year). There are specific rules where an individual has a cash ISA in the year and wants to open a “Help to Buy ISA”. £1,200 can be transferred to the “Help to Buy ISA” but any additional funds must either go to a stocks and shares ISA or a non ISA account.

2.6 Consider saving for children under the age of 18, who do not have a Child Trust Fund, through Junior ISAs (£4,080 can be put into a Junior ISA for 2015/16, the same amount as can be added to a Child Trust Fund for the year). Anyone can put money in on behalf of the child. Generally, the child cannot access the funds until he or she reaches the age of 18 (the exception being if the child becomes terminally ill). A 16 year old can potentially have a Junior ISA and an Adult cash ISA. Junior ISAs automatically turn into adult ISAs when the child turns 18.

The new dividend tax regime

2.7 Our Summer Budget Summary provided an overview of the new regime. It comes into effect from 6 April 2016 and will significantly increase the tax liabilities of those with a lot of dividend income. For portfolio investors there is nothing that can be done as large multi-nationals will not change the time that they pay out dividends to mitigate the personal tax liabilities of such shareholders. Paying out a dividend prior to 6 April 2016 will normally make sense where:

- you can exercise control over the company distribution policy;
- it is legal (the company has the reserves); and
- it makes commercial sense.

2.8 Remittance basis users who mainly have foreign dividend income (particularly where the income has suffered foreign tax) and will need significant funds in the UK in the short to medium term should consider being taxed on the Arising Basis for the tax year and bringing the dividends received for the year into the UK. They would benefit from the lower dividend tax rates, the foreign tax credit and the 10% notional UK tax credit. We would be happy to advise on this.

Tax favoured investments

Investing in smaller businesses is generally higher risk so various schemes have been enacted to offer taxpayers incentives to provide financing for smaller entities.

Enterprise Investment and Seed Enterprise Investment Scheme

2.9 A subscription for fully paid shares wholly in cash in the ordinary share capital of a company carrying on a qualifying trading operation in line with the Enterprise Investment Scheme (EIS) rules (or in a small early stage company coming within the Seed Enterprise Investment Scheme (SEIS) rules) can attract various tax benefits, as shown in the table below.

2.10 Specific advice should be taken, as the two reliefs are subject to a number of complex conditions (applying both to the investor and the company) that must either be met or not breached both for relief to be available initially and to avoid a claw back of any relief given.

Benefit	EIS	SEIS
Maximum investment	£1 million	£100,000
Income Tax Relief on the amount invested up to the maximum for the tax year	Yes at 30%, provided: • the taxpayer has sufficient income to set the relief off against; and • the qualifying conditions are not breached in the three-year period after acquisition.	Yes at 50%, provided: • the taxpayer has sufficient income to set the relief off against; and • the qualifying conditions are not breached in the three-year period after acquisition.
CGT exemption on the disposal of the EIS shares	Yes, provided Income Tax relief has been validly claimed and not been forfeited.	Yes, provided Income Tax relief has been validly claimed and not been forfeited.
Deferral of gains as a result of re-investment in qualifying shares	Yes, every £1 of qualifying reinvestment defers £1 of gain. This relief can also be claimed by Trustees. The qualifying investment must be made within the period commencing one year before and ending three years after the relevant disposal (that is the disposal that realised the gain that you wish to defer). Where the reinvestment takes place before the relevant disposal, the EIS shares must still be held at the time of the relevant disposal. The qualifying conditions for CGT deferral relief are less stringent than for the other EIS reliefs. The investor can claim this relief and be connected to the company.	No. The entire gain is not deferred but up to 50% of the gain may be exempt (see below).
CGT Reinvestment Relief	No, just CGT deferral relief, so the gain will become chargeable at a later date.	Yes, provided the Income Tax relief claim is made and not forfeited as a result of breaching the qualifying conditions. See below for further details.

2.11 It is important to note that for the CGT exemption to apply Income Tax Relief ***must*** have been claimed. This should, therefore, be done even in cases where the Income Tax position of the taxpayer means that the Income Tax relief is not in itself worthwhile (where for example the individual might have to disclaim their personal allowance in order to have income to claim relief against).

2.12 Both the EIS and the SEIS regime allow for a qualifying investment made in a tax year to be carried back to the preceding tax year provided the taxpayer has sufficient capacity to use the relief in the earlier tax year. This means that for both EIS and SEIS relief 5 April 2016 is the deadline for making a qualifying investment that can be carried back to 2014/15 to take advantage of any unutilised capacity in that tax year. Investment should be deferred until after 5 April 2016 if capacity in both 2015/16 and 2014/15 has been exhausted.

2.13 The SEIS regime for CGT Reinvestment Relief is available where a gain is realised as a result of an actual chargeable disposal (it does not apply for deemed disposals) provided the investor makes an Income Tax relief claim (either for the tax year in which the gain is realised or by way of a carry back claim to that tax year) and does not forfeit the Income Tax relief.

2.14 For tax years from 2013/14 onwards, provided Income Tax relief is not withdrawn, for gains reinvested in qualifying SEIS shares up to 50% of the gain will be exempt from CGT. This means that per tax year the potential maximum CGT exemption is £50,000 (half of the £100,000 maximum investment permitted), resulting in a potential maximum tax saving of £14,000. If you have a gain in 2014/15 and have not made a suitable SEIS investment in that tax year a reinvestment prior to 6 April 2016 can be carried back.

2.15 As noted at 1.8 the general cap on the offset against general income of capital losses on the disposal of shares in unlisted trading companies does not apply to losses relating to EIS and SEIS shares. This relief can be very valuable so it is important to keep in mind if investments in such securities do perform badly. The capital loss that can be offset must be reduced by the amount of Income Tax relief that the taxpayer was entitled to.

Venture Capital Trusts

2.16 Provided certain conditions are met, for investments by individuals of up to £200,000 per tax year Venture Capital Trusts (VCTs) can offer: (i) 30% Income Tax relief (assuming that the individual has a sufficiently high tax liability for the relevant tax year); (ii) tax-free dividends; and (iii) exemption from CGT on disposal.

Social Investment Tax Relief

2.17 Social Investment Tax Relief (SITR) was enacted to encourage qualifying investment in social enterprises (and assist social enterprises in accessing financing) and offers a package of both Income Tax and CGT reliefs. To an extent the legislation is modelled on the EIS provisions meaning there is significant complexity with stringent conditions needing to be met for relief to be available. Again specialist advice is recommended if such an investment is being considered.

2.18 Broadly a social enterprise is defined as a trading business that tackles social problems, improves communities, people's life chances, or the environment with the profits generally going back into the community. State Aid issues mean that there is currently a relatively low cap on the amount of funding each social enterprise can raise under the scheme in a three-year period.

2.19 Provided their tax liability is high enough a taxpayer can obtain Income Tax relief equivalent to 30% of the value of the investment but is limited to a maximum allowable amount of £1 million (given the limit on the investment allowed into each social enterprise, to reach the £1 million limit a number of different investments would be required).

2.20 An investment can be carried back one year (though not in 2014/15 as that was the first year that SITR was effective for). The deadline for making a qualifying SITR investment that can be carried back to 2014/15 to take advantage of any unutilised capacity in that tax year is 5 April 2016. Investment should be deferred until after 5 April 2016 if capacity in both 2015/16 and 2014/15 has been exhausted.

2.21 In addition to the Income Tax benefit there are two potential CGT benefits. Disposal relief such that any gain will not be subject to CGT and holdover relief for re-invested gains, provided in both cases that the qualifying conditions are met.

2.22 SITR is currently a temporary measure (with a 5 April 2019 end date). It may be extended and we know that the Government is currently looking to obtain the necessary State Aid clearances to raise the current funding limits (something which is critical if SITR is to be really beneficial to social enterprises looking to raise additional funding).

3 Pensions

The current pension tax landscape is complex, subject to frequent change and decisions cannot be taken without both specialist pension investment and tax advice.

Pension contributions

3.1 Take specific advice to ensure you maximise tax relief on your pension contributions and do not suffer unnecessary tax charges.

3.2 A few points to note for the current tax year:

a) There will be a tax charge, when benefits are drawn, if the value of your total pension funds exceeds the lifetime allowance (currently £1.25 million unless you registered for one of the transitional protections). Monitor the amount within your various pension funds and take advice where it seems that the lifetime allowance may be exceeded.

b) Effective tax relief on pension contributions is limited to the lower of your earnings for the year and your total available annual allowance for the year. Your total available annual allowance is the annual allowance for 2015/16 of £40,000 (though see below for a special quirk resulting from transitional provisions to do with another change to the relief rules) plus any available unused annual allowances for the previous three tax years. If your contributions exceed this figure you will be subject to an Income Tax charge so consider whether action should be taken now (such as ceasing contributions until after 5 April 2016) if you think the annual allowance may be exceeded.

c) The ability to utilise any unused annual allowance from 2012/13 will be lost if it is not used before 5 April 2016. The annual allowance for the year of payment is deemed to be used first, and then the unused annual allowance for the prior years (the unused amounts in prior years being used on a first in, first out basis), so to avoid losing the unutilised 2012/13 amount it will be necessary for total contributions in 2015/16 to cover the allowance for 2015/16 and the unutilised capacity in 2012/13.

d) For those without earned income (including minors), contributions of £2,880 (net) can be made, and an amount equivalent to the basic rate tax (so currently £720) claimed by the pension provider and added to the pension pot (meaning £3,600 in total in pension savings), regardless of the level of income or tax paid for the year.

3.3 As explained in previous years' Tax Planning Bulletins and in our specific briefings on Pension Complications (available from www.rawlinson-hunter.com/News/Archives) the lifetime allowance has reduced a number of times since the "A Day" changes in 2006. As a result of making a "protection" election you may have already secured a higher protected lifetime allowance figure than £1.25 million. Depending on the protection election you made specified strict conditions may apply with respect to additional pension contributions that can be made.

3.4 It is important for an individual who has made a FP14 election or an earlier election for either Fixed Protection 2012 (FP12) or Enhanced Protection to keep in mind the fact that the Protection will be forfeited if further contributions are made by them or on their behalf (this includes the deemed employer contribution where benefits accrual increases under a final salary scheme). Auto-enrolment is a particular trap. Employees who are auto-enrolled must opt out within a month of being auto-enrolled to avoid forfeiting Protection.

3.5 Individual Protection 2014 ('IP14') is available to individuals who had total UK tax relieved savings in excess of £1.25 million on 5 April 2014. Individuals who make this election can continue to make pension contributions and will have an enhanced lifetime allowance equal to the lower of £1.5 million and their pension savings on 5 April 2014. The deadline for claiming IP14 is 5 April 2017, so is still some way off. However, since there is no downside to qualifying individuals making the election it would seem prudent to make the election earlier to ensure that the deadline is not missed inadvertently.

3.6 The lifetime allowance decreases to £1 million from 6 April 2016. Protection will be available to individuals who have total UK tax relieved savings in excess of £1 million on 5 April 2016. We do not yet know what the rules for this will be or how (or even if) it has to be claimed. Since £1 million is a relatively low figure when you consider what might be built up in a final salary scheme it is possible that there could be self-certification.

3.7 From 2016/17 onwards the pension relief available to taxpayers with adjusted income over £150,000 is reduced. The standard £40,000 annual allowance is tapered down to a minimum of £10,000 at a rate of a reduction of £1 for every £2 of income. An individual with pensionable income of £190,000 would, therefore, have an annual allowance of £20,000.

3.8 For the tapering provisions to work properly it is necessary to align pension input periods with the tax year. The legislation should do this by April 2016. There are transitional provisions to protect individuals from retrospective tax charges as a result of the alignment. These means that for tax year 2015/16 only an individual will have an annual allowance of between £40,000 and £80,000 depending on pension contributions made prior to 9 July 2015.

Flexible Pensions

3.9 Various new measures have been introduced from 6 April 2015, which give individuals far greater choice over what to do with their pension savings where those pension savings are held in defined contribution (or money purchase) schemes.

3.10 In most cases (though not for unfunded public sector schemes) those with final salary schemes will be able to transfer out to a money purchase scheme to take advantage of the flexibility, provided they can demonstrate they have taken financial advice before doing so. We cannot comment about the wisdom of this but given the potential benefits of a final salary scheme we would suggest that nothing is done without comprehensive financial advice being taken from a pensions expert.

3.11 The choices made can have significant tax repercussions, so it is important that both investment and tax advice is taken.

4 Capital Gains Tax (CGT)

4.1 Have you used your annual exemption for 2015/16 of £11,100? If not, consider doing so by:

- Selling investments standing at a gain. If the same investment is to be re-purchased in your personal capacity remember to avoid the bed and breakfasting anti-avoidance rules (which will negate the planning). There must be at least 30 days between the date of sale and the date of acquisition.
- Gifting assets that are standing at a gain to your children (or anyone else that you wish to provide for).
- Transferring investments standing at a gain to a trust, though take advice on the IHT consequences of doing so.

4.2 If you have unutilised basic rate band consider transactions (such as those discussed above) that would utilise the unused amount. The efficacy of this tactic will depend on whether in future years you will expect to pay CGT at the higher 28% rate, rather than the lower 18% rate. If you remain a lower rate taxpayer such tactics would be counterproductive as all that would be achieved is an acceleration of the tax payment point.

4.3 Is your spouse/civil partner making use of their annual exemption, basic rate tax band and/or capital losses? If not, provided a genuine absolute transfer can be effected, consider transferring/splitting ownership of assets standing at a gain.

4.4 Have you already realised gains which exceed the annual exemption and which will be subject to CGT? If so, review your investments and see if: (i) you can sell assets standing at a loss; or (ii) you own an asset that has become worthless (meaning that you can make a 'negligible value' claim).

4.5 Negligible value claims must be made within two years of the end of the tax year during which the asset is claimed to have become of negligible value. This means that 5 April 2016 is the deadline for claims that assets became of negligible value in 2013/14.

4.6 Is it possible to defer disposals that are going to realise a gain until after 5 April 2016? If so, this would defer the due date for payment of the tax for one year thus giving you a cash flow benefit. However, be careful where you would pay CGT at the lower 18% rate in 2015/16, as such deferral may result in CGT being payable at the higher 28% rate.

4.7 Entrepreneurs' Relief (ER) can save an individual up to £1.8 million. Maximisation of ER should, therefore, be considered at every stage in the life cycle of the business. The provisions can be tricky and we can provide on-going advice to ensure you (and other family members) do not miss out.

4.8 Recently, due to perceived abused of the ER provisions legislation has been enacted to restrict ER in certain joint venture situations, partnership situations and where there are associated disposals. The professional bodies are in discussion with HMRC on this and there was a comment in the Autumn Statement that changes might be made to target the provisions more closely.

4.9 Care should be taken where there are to be transfers between spouses/civil partners, as the transferee spouse/civil partner does not take over the qualifying period of the transferor spouse/civil partner. Transferring qualifying business assets from a qualifying spouse to a non-qualifying spouse prior to a disposal would be a costly error.

4.10 If you have not done so already, the deadline for claiming capital losses realised in tax year 2011/12 is 5 April 2016. This is also the deadline by which business and gift holdover relief elections should be made.

5 Inheritance Tax (IHT)

General points

5.1 IHT applies to taxable estates exceeding £325,000 (including gifts in the seven years before death) with any unused nil-rate band being available to transfer to a spouse/civil partner. A tax efficient Will coupled (where necessary) with a judicious lifetime giving strategy (using trusts where appropriate - see section 8) can reduce its impact significantly.

5.2 In addition to the standard nil-rate band individuals will have a residence nil rate band where a home is passed to direct descendants. The band will be £100,000 in 2017/18 and will increase in stages up to £175,000 in 2020/21. Similar to the standard nil rate band any unused residence nil rate band will be transferable to a spouse or civil partner. There will, however, be a tapered withdrawal of the band for estates valued at more than £2 million. Where the value of your estate will not exceed £2 million this new residence nil-rate band should make estate planning much simpler.

5.3 Your Will should be as tax efficient as possible, within the constraints of how you wish to dispose of your property. It should also be reviewed regularly to ensure it remains in keeping with your wishes and continues to be tax efficient.

- Ensure IHT favoured property is left to legatees with respect to whom the transfer of value will not be exempt.
- Where there is an exempt residuary legatee, such as a charity, take specialist advice to avoid grossing up on gifts to other beneficiaries.
- Will trusts will be desirable in some cases but not all. We can review whether a trust would be appropriate to fulfil your wishes and what sort of trust would be most tax efficient.

5.4 Debts/loans can be IHT efficient in reducing the value of a taxable estate. However, specific advice should be taken as anti-avoidance provisions can apply to disallow the deduction. For example, a deduction will only be given against the death estate for a liability to the extent that it is subsequently repaid (subject to an exemption for genuine commercial arrangements).

5.5 Where an individual has died without a Will or where the Will is not tax efficient a Deed of Variation can often rectify the situation. Where a Deed of Variation results in a gift to charity, for it to be valid the charity must be notified of the Deed of Variation.

5.6 Whether made on death or as part of a lifetime giving strategy the following transfers are exempt from IHT:

- gifts to charity (see section 7);
- gifts to most mainstream political parties;
- transfers between spouses/civil partners of the same domicile for IHT purposes (that is taking deemed domicile into account).

Absolute lifetime giving

5.7 You should try to make gifts so as to use your £3,000 annual exemption from IHT. If you did not use last year's exemption, you can avoid wasting it by making gifts of up to £6,000 by 5 April 2016.

5.8 Small gifts (£250 or less per donee each tax year) are exempt from IHT, as are certain gifts in consideration of a marriage/civil partnership (for example each party to the marriage can give up to £2,500 and parents can give up to £5,000). Where the parties to the marriage wish to give each other more expensive gifts it would be more efficient to wait until after they are married so the transfer is exempt (rather than merely potentially exempt, see 5.10 below).

5.9 Regular gifts out of income may be exempt. The conditions are strict and advice should be taken to ensure gifts come within the relief provisions and that appropriate evidence is retained to prove this.

5.10 Where the above exemptions do not apply, absolute lifetime gifts to individuals are potentially exempt and remain free of IHT if made over seven years before the donor's death. Furthermore, the tax payable on death is reduced where the donor dies in the period from three years to seven years after the gift (the relief being greater for every additional year that the donor survives).

5.11 During their lifetimes spouses/civil partners have their own separate IHT annual exemptions and nil-rate band. They can also independently make the various exempt gifts detailed above. Co-ordinating giving strategies may be appropriate and we can advise on the most tax efficient way to achieve joint goals.

Special IHT reliefs

5.12 There are special reliefs from IHT, which apply to qualifying business property, agricultural property and woodlands. The relief for business property is particularly favourable and currently extends to shares in trading companies that are listed on the Alternative Investment Market ("AIM"). The reliefs can be complex (particularly where there is a group structure or a partnership) and advice should be taken in advance to ensure that the qualifying conditions will be met.

5.13 Remember that new debts/loans taken out on or after 6 April 2013 where the funds are used to acquire assets that qualify for agricultural or business property relief will, regardless of what property the liability is secured against, for IHT purposes be taken first to reduce the value of the qualifying property (similar provisions apply to trusts when calculating the decennial charge). Pre 6 April 2013 loans are grandfathered and individuals who have such loans secured against other property should take advice before doing anything that would alter the terms of such loans.

6 Residential Property Issues

Letting out residential property

6.1 Residential landlords who rent out furnished property can currently claim a wear and tear allowance to provide relief for the cost of replacing furniture, kitchenware, household appliances etc:

- the allowance is generally equal to 10% of the gross rental income; there is no correlation to the amount that is actually spent on replacing furnishings; and
- no record keeping is required with respect to the expenditure on furnishings incurred and the allowance can be claimed even if no such expenditure is incurred in the tax year.

6.2 The Government feels that the basis behind the wear and tear allowance is unfair as it unduly benefits those whose gross rental income is high, so 2015/16 is the last year that the deduction is available. A new relief proposed (replacement furniture relief) with respect to actual expenditure will be introduced for 2016/17 onwards.

6.3 This will make a material difference to the tax liabilities of individuals with significant gross rental income whose actual expenditure on replacing furniture is significantly less than the 10% gross rental income amount they can deduct. For example an individual with gross rental income of £150,000 can deduct £15,000 as a wear and tear allowance and may have only spent £1,300 in the year on replacing furniture.

6.4 Wherever possible landlords should delay expenditure on items that will qualify under the replacement furniture relief until after 5 April 2016 when it comes into effect.

6.5 In an attack on residential property landlords (though not corporate landlords or where there is a furnished holiday let) the interest relief deduction allowed against income where a loan is taken out to provide financing for a property that is let residentially is being restricted. Phased in over four tax years from 2017/18 onwards the eventual outcome will be that relief is only given by way of a tax reducer (at a maximum rate of 20%). This is a highly significant change and the cashflow impact has to be considered carefully by individuals who have significant borrowing. Where there are multiple properties and/or main residence relief and/or lettings relief issues specialist tax advice is recommended so that a tax efficient strategy is put in place. We would be happy to assist.

Extension of CGT to all non-residents

6.6 In general (there are exclusions for companies that are diversely owned, unit trust schemes and OEICS that meet the widely-marketed scheme conditions) from 6 April 2015 CGT has applied to the sale of UK residential property by non-UK residents.

6.7 There are transitional provisions for residential properties owned by non-UK residents at 6 April 2015. The default position is that there will be rebasing to the 5 April 2015 market value. Taxpayers will not, however, have to accept this default position and will be able to elect either to:

- time apportion the whole gain over the period of their ownership, so that they only pay tax on the gain apportioned to the post 5 April 2015 period. (This option will not be available to non- natural persons who are subject to ATED-related CGT on any part of the gains); or
- be taxed on the gain computed over the whole period of ownership.

6.8 A careful record should be made of all chargeable capital losses (so not where main residence relief would have applied to the gain) on UK residential property. Losses realised after 5 April 2015 whilst UK resident can be set against a gain realised in a period of non-UK residence and vice versa.

Main residence relief

6.9 Remember that main residence relief is only available on the disposal of a residential property where that property is (or has been) your actual residence. In addition relief is only available on the garden or grounds of a residence within permitted limits. Given the potential importance of this relief advice should be taken. This is particularly the case where there are multiple residences.

6.10 Bringing non-resident individuals into CGT without any changes to the CGT main residence relief provisions would have meant that, provided the UK property qualified as a residence, the individual would invariably choose to nominate it as their main residence and thereby avoid the CGT charge. This would have seriously undermined the new CGT charge, so a change was required but EU law meant that it was not possible to just limit main residence relief to UK residents or to allow UK residents to have more favourable election provisions in multiple residence situations than non-UK residents.

6.11 The nomination facility has been retained; and new provisions have been introduced, which restrict the circumstances in which a property located in a country other than that in which the individual is tax resident, can qualify for main residence relief.

6.12 Where the individual is resident in the same jurisdiction as the property the nomination will automatically be valid for the year and this test will not be relevant. Where the residence requirement is not met the day count test is applied. Where the individual ("P") has owned the property for the entire tax year, to meet the test at least 90 days must be spent in "qualifying houses". A qualifying house is defined as the property itself and any other property in the same country that is a dwelling house or part of a dwelling house if at the time any of the following have an interest in the property:

- P;
- P's spouse or civil partner at that time; or
- an individual who is not P's spouse or civil partner at that time but is at the time of the disposal.

6.13 Where P's ownership period starts or ends in the tax year (so where there is a partial tax year) the 90-day figure is multiplied by the relevant fraction and rounded up (where necessary) to give the minimum day count figure. The relevant fraction is X/Y, where:

- X is the number of days in the partial tax year (so P's period of ownership in the tax year); and
- is the number of days in the tax year.

A day counts for the purposes of this test if either:

- the individual is present in the qualifying house at the end of the day; or
- is present in the house for some period during the day and the next day has stayed overnight in the house.

6.14 For married couples and civil partners, occupation of a qualifying property by one spouse or civil partner will be regarded as occupation by the other (there is no double counting).

6.15 No other changes have been made to the way main residence relief works. In particular the 18-month final period relief and the other absence reliefs (where the conditions are met these deem a period during which the individual is not in occupation of the property to be a period of occupation for the purposes of the relief) are unchanged. Most of these reliefs are, however dependent on actual residence (either before, after or both before and after) so the changes to what can qualify as a main residence will have an impact. In considering whether final period relief or the absence reliefs can apply, periods prior to 6 April 2015 will be taken into consideration.

Higher rates of Stamp Duty Land Tax (SDLT) on purchases of additional residential properties

6.16 For purchases after 1 April 2016 in England, Wales and Northern Ireland an additional 3% charge will apply generally on purchases of residential property where at the end of the transaction day the purchaser will own more than one residence (there is the possibility of a refund if one of the properties is the previous main residence and it is sold within eighteen months). Scotland is introducing a similar additional charge with respect to its Land and Buildings Transaction Tax (LBTT).

6.17 Where a property purchase is being considered that will be subject to the additional 3% it is worth considering whether the necessary due diligence work to ensure the property is sound etc can be carried out quickly enough to enable a sale to complete prior to 1 April 2016.

High Value Residential Property Owned by Bodies Corporate

6.18 In the 2012 Budget a package of measures was announced to tackle perceived avoidance involving the acquisition and holding of high value residential property through corporate and other vehicles (termed "enveloping"). Initially, for these purposes, "high value" residential property was defined as property with a value in excess of £2m. The penal 15% Stamp Duty Land Tax rate came in with immediate effect, with the Annual Tax on Enveloped Dwellings (ATED) and the extension to the scope of CGT coming in from April 2013. There are specified exemptions from these provisions and reliefs that can be claimed where the qualifying conditions are met.

6.19 This ATED charge:

- has been extended with effect from 1 April 2015 to properties that were worth in excess of £1 million as at 1 April 2012 (or the acquisition date if later), with the 2015/16 charge being set at £7,000 (and the 2016/17 charge at £7,200); and
- will be extended with effect from 1 April 2016 to properties that were worth in excess of £500,000 as at 1 April 2012 (or the acquisition date of later), with the 2016/17 charge being set at £3,500.

  In both cases ATED-related CGT will come in from 6 April on the properties brought within ATED but with the base cost uplifted to the value immediately before the property comes within the scope of ATED-related CGT. For example, a property valued at £1.7 million as at 1 April 2012 will have come into the ATED charge from 6 April 2015 (assuming no exemption or relief applied) and the base cost will be the 5 April 2015 value of the property.

6.20 The legislation provides for the ATED charge to increase each year in accordance with the consumer price index (for the previous September). However, the Chancellor can introduce far higher increases in the ATED charges (as occurred in 2015/16).

6.21 The provisions are complex and, with the substantial 2015/16 increases in the ATED charges for properties worth more than £2 million, making best use of the reliefs is particularly important. Forfeiting entitlement to relief as a result of allowing occupation of the UK residential property by a non-qualifying person could be very costly. Specific advice is recommended to avoid unnecessary tax liabilities.

6.22 The higher ATED charges (particularly when combined with the announcement that such structures will not work as IHT shelters from 6 April 2017 – see 9.6 and 9.27) may mean that some taxpayers will want to reconsider whether it is worth re-structuring to remove the UK residential property from the structure. Re-structuring is likely to be complex with the potential for various tax liabilities to be crystallised and again specialist advice is recommended.

7 Tax Efficient Giving

UK tax legislation includes a range of reliefs for charitable giving, some of the most important of which are discussed below. It should be noted that to be entitled to UK tax relief the charity must be situated in the UK, any other EU Member State, Iceland or Norway.

Lifetime giving

Gift Aid

7.1 Where there are cash donations, provided a valid Gift Aid declaration is made by the donor (such a declaration being capable of being made retrospectively), the Gift Aid regime will:

- increase the funds received by the Charity (currently the charity will receive an additional amount equivalent to 25% of the amount gifted so a cash gift of £80 will mean the charity receives £100); and
- provide tax relief to higher and additional rate taxpayers.

7.2 There is, however, a potential trap for the unwary as the Gift Aid rules provide that the donor has to pay sufficient tax to cover the basic rate tax the charity will reclaim. This means that if the donor's standard tax liability is insufficient he or she will be subject to an additional tax charge to cover this. In such cases it may be appropriate to make a gift under Gift Aid up to the amount your tax liability can cover and an additional gift, which is not covered by a Gift Aid Declaration.

7.3 Gift Aid should be made by the spouse/civil partner with the highest marginal income. The paperwork must reflect this. Ideally joint accounts would be avoided.

Gift Aid is not available where an individual receives a benefit as a result of the donation unless the benefit is within the de minimis limits.

Gifts of assets in specie

7.4 Gifts of assets in specie to charity are tax neutral for CGT purposes (that is, the transaction is deemed to take place at neither a gain nor a loss). A gift to a charity of an asset standing at a gain will not, therefore, result in the donor crystallising a gain.

7.5 In addition to the CGT relief, where "qualifying assets" are gifted to charity, Income Tax relief is also available. Broadly, "qualifying assets" are defined as listed securities, units in an authorised unit trust, shares in an open-ended investment company, an interest in an offshore fund and/or immovable property. The Income Tax relief is available by way of set off against the individual's total income and is equivalent to the market value of the property gifted (less any benefit received by the individual).

7.6 The combination of Income Tax and CGT relief means that, where the asset is standing at a gain, gifting qualifying assets in specie is generally more valuable than the relief for cash gifts (Gift Aid). The relief is even more valuable where an offshore fund is gifted if that offshore fund is a non-reporting fund such that the individual would have been subject to Income Tax on the disposal if it had not been gifted to charity.

Legacy giving

7.7 Gifts to charity are exempt from IHT. In addition, there is a reduction in the IHT rate to 36% (from 40%) where at least 10% of a person's net estate is left to charity. If you want to make such a charitable bequest take advice to ensure that:

- your Will is drafted to take advantage of this relief; and
- other parts of your Will are updated so that overall it still reflects your wishes.

8 Trust Planning

General points

8.1 Trusts have proved to be a sensible and popular method of preserving family wealth, often driven by prudence rather than any tax benefits. However, it is only sensible to seek detailed advice before:

- establishing a trust;
- varying an existing trust; or
- making provision for a trust within a Will.

The need for advice is particularly acute where a lifetime trust is to be established which will be settlor-interested (the definition varies but, broadly, one generally wants to avoid a trust which can benefit the settlor, his or her spouse/civil partner or their minor children). Various anti-avoidance provisions apply to such trusts. In addition, it is not possible to defer (hold over) the tax on a capital gain transferred to a settlor-interested trust, meaning that both CGT and IHT may be payable.

8.2 Most lifetime trusts established since 22 March 2006 are within the IHT relevant property regime. Broadly this means that (i) there may be an immediate 20% charge to IHT on the value transferred into trust in excess of the nil-rate band and (ii) there may be a charge of up to 6% every 10 years and an exit charge when property leaves the trust. Prior to 22 March 2006, this treatment only applied to discretionary trusts.

8.3 The establishment of a trust is still a valuable tool where:

- The settlor is neither UK domiciled nor deemed UK domiciled, as an excluded property trust can be created (specific advice should be taken).
- The amount settled falls within the nil-rate band, (for example the establishment of a discretionary trust by grandparents or settling property which has a low value but significant capital appreciation prospects).
- Tax favoured property is settled (such as qualifying business property).
- It is desirable to tie up capital for the long term (as the 6% decennial charge IHT rate is significantly lower than the 40% tax rate on death).

8.4 As mentioned in section 1.5 the income and capital distribution strategy should be reviewed prior to 6 April 2016. This is particularly the case if the terms of the trust deed mean that income will be seen as added to capital if not paid out prior to then.

Whilst not a pre 6 April 2016 point the issue of paying out non accumulated income also has to be considered prior to the decennial charge. This is because deeming provisions mean that for IHT purposes the 6% IHT charge applies to all income within the settlement immediately before the ten year anniversary where at that time the income has been retained by the trustees for more than five years.

Offshore trusts

8.5 Offshore trustees with a UK resident settlor or beneficiaries (regardless of domicile status) may need to take action before 6 April 2016 to ensure the trust distribution policy for the year is as tax efficient as possible. This is particularly the case where the beneficiaries have a mixture of domiciles. Particularly given the changes that will come in from 6 April 2017 (see section 9), consideration should be given as to whether distributions should be made prior to 6 April 2017.

8.6 Unless specialist advice is taken beforehand trustees should avoid trust borrowing as a transfer of value (including a loan) made at a time when there is outstanding trustee borrowing can trigger particularly harsh CGT anti-avoidance provisions (depending on whether the borrowing is used for a permissible purpose).

8.7 There are very complex anti-avoidance provisions where a UK resident receives any benefit from an offshore structure. Occupying a house that is owned by a non-resident company or trust or receiving an interest free loan from such an entity is seen as a benefit and tax complications are likely to result unless specialist advice is taken beforehand.

Alternatives to trusts

8.8 A Family Limited Partnership (FLP) might be a viable tax efficient alternative to a trust. Specialist advice should be taken.

9 UK Resident Foreign Domiciliaries (RFDs)

The Remittance Basis

9.1 RFDs can access the Remittance Basis of taxation. Generally where the Remittance Basis applies the UK tax charge on their foreign income and gains is deferred unless and until a remittance is made.

9.2 Apart from where the RFD's aggregate unremitted income and gains for the tax year are below the £2,000 de minimis level, claims by an adult RFD to access the Remittance Basis will generally come at the cost of forfeiting the personal allowance and CGT annual exemption for the relevant tax year. In addition, for long-term residents the Remittance Basis charge (RBC) is payable, as follows:

- the £30,000 charge where the RFD was UK resident in at least seven of the nine tax years preceding 2016/17 but not UK resident in as many as twelve of the fourteen tax years preceding 2016/17;
- the £60,000 charge where the RFD was UK resident in at least twelve of the fourteen tax years preceding 2016/17 but not UK resident in as many as seventeen of the twenty tax years preceding 2016/17; and
- the £90,000 charge where the RFD was UK resident in at least seventeen of the twenty tax years preceding 2016/17.

9.3 Pre-6 April 2016 planning may be advisable if 2016/17 will be the first tax year that the £30,000, £60,000 or £90,000 RBC will be payable. Even if it is decided that nothing needs to be done the possibility should be considered and specific advice taken.

9.4 Individuals who move between being taxed on the Arising Basis and the Remittance Basis should consider opening up a new suite of offshore accounts so that foreign income and gains in an Arising Basis year (which may be remitted without an additional tax liability since they will already have been taxed) do not become mixed with income and gains of a Remittance Basis year.

9.5 Where both are long term RFDs, spouses/civil partners may want to consider consolidating the ownership of foreign assets. The aim of this is to re-arrange their affairs such that just one of them has to pay the RBC. Specialist legal and tax advice (UK and foreign) should be taken before transferring ownership of any assets.

Changes to the Remittance Basis - "deemed domicile"

9.6 Significant changes to the taxation of foreign domiciliaries were announced in the Summer Budget 2015. The changes announced by the Chancellor are to be effective from 6 April 2017 and aim:

- To prevent anyone who was born in the UK with a UK domicile of origin but who subsequently acquires a foreign domicile of choice before returning to resume UK residence, from deriving any benefit from that foreign domicile, whether with regard to Income Tax, Capital Gains Tax (CGT) or Inheritance Tax (IHT) whilst UK resident. The IHT provisions are especially penal as they will bring trusts established by the individual whilst non-UK resident with a foreign domicile of choice within the scope of the UK tax net. The harshness of the IHT provisions means there is a period of grace such that the IHT deemed domicile will not apply during the year of residence if the individual has not been residence in either of the two preceding tax years.
- To limit the period during which a UK resident but foreign domiciled taxpayer is able to claim foreign domiciled status for all tax purposes to 15 out of the previous 20 tax years. Accordingly, if a non-domiciliary comes to the UK and remains here continuously, the remittance basis of taxation will cease to be available for the 16th and subsequent years, and can only be re-instated after a period of absence from the UK of at least 6 tax years.
- To extend IHT so that it applies to UK residential property owned indirectly by foreign domiciliaries or trusts through a foreign company or partnership structure (see 9.27).

9.7 The provisions applying to individuals who were born in the UK with UK domiciles of origin are supposed to be draconian. The provisions for long-term residents are different. The Chancellor made clear that whilst he wanted them to pay tax on worldwide income and gains held directly, he was intending for there to be a beneficial regime for such individuals if they settle offshore trusts prior to becoming deemed UK domiciled. Initially it was understood that the legislation would be enacted in Finance Act 2016 so we would have had the details but deciding on the details was too complex in the time available so it has been deferred to Finance Act 2017.

9.8 From an IHT perspective we understand that excluded property status will be preserved where the trust is settled prior to deemed UK domicile being acquired and that if any additional property were added it would only be that property and whatever derived from it that would come within the UK IHT charge. We are not clear about what decisions will be made on Income Tax and CGT. We will produce a briefing when more information is available.

9.9 If you come within either of the categories that will be seen as "deemed domiciled" from 6 April 2017 we would recommend that you seek advice urgently as it may be that planning needs to be considered and it might be helpful to be able to take some steps prior to 6 April 2017.

9.10 We do not yet know what transitional provisions may be enacted. This means that individuals who thought they only had to remain non-UK resident for four tax years to break deemed UK domicile may suddenly find that they have to remain outside for six years.

The remittance basis definition and avoiding inadvertent remittances

9.11 The Remittance Basis is highly complex and we can provide bespoke advice to enable you to avoid inadvertent remittances and maximise tax mitigation opportunities. It may be that a detailed discussion of what the funds are required for and what offshore sources of funding are available will allow for the identification of funds that can be remitted with no tax cost, or one that is acceptable.

- where funds are needed for general UK expenditure Double Tax Treaty relief could be especially helpful in reducing the UK tax cost to an acceptable amount where the foreign tax paid is high;
- remitting funds that represent or can be traced to dividend income mean that under the current regime it is possible to claim the UK tax credit on foreign dividends (this is not possible under the regime coming in from 6 April 2016 – see section 2);
- where the funds are required for a specific purpose, one of the on-going exemptions (such as business investment relief) might be helpful; and
- if the funding to be used traces back to pre 6 April 2008 relevant foreign income, one of the transitional reliefs might be in point such that the funds can be remitted with little or no UK tax liability.

9.12 Remember that the definition of "remittance" is very wide:

- It covers cash remittances, goods, services (including UK related travel) and the payment of UK related debts where the transaction can be traced directly or indirectly to previously unremitted foreign income or foreign chargeable gains of the RFD.
- Actions taken and UK benefits enjoyed by any 'relevant person' in connection with the RFD can result in a taxable remittance. Broadly, the relevant person definition encompasses (i) the RFD; (ii) his or her immediate family (excluding adult children but including minor grandchildren); (iii) trusts which benefit the taxpayer or other relevant persons and (iv) close companies or foreign companies that would be close if UK resident (and subsidiaries of such companies) in which the taxpayer or any other relevant person is a participant.

9.13 Transitional rules and ongoing exemptions/reliefs (such as business investment relief) can provide significant tax mitigation opportunities for the well advised but are also complex and without specialist advice inadvertent tax liabilities can be crystallised.

9.14 Appropriate offshore banking arrangements and investment strategy are critical if inadvertent remittances and tax inefficiencies are to be avoided. Written investment guidelines should be given to all offshore bankers and investment advisers to avoid unnecessary UK tax liabilities being crystallised.

RFDs and offshore trusts

9.15 Offshore trusts can still be highly beneficial for RFDs. However, unadvised actions taken by trustees of offshore trusts can significantly disadvantage the settlor and/or beneficiaries.

- Offshore trusts established by RFDs will generally include as beneficiaries the settlor or other relevant persons meaning that the trustees are also relevant persons in connection with the RFD. This means that where the RFD's Remittance Basis income or gains are within the structure the trustees' actions (for example, using the income to acquire a UK investment) can result in a deemed taxable remittance by the RFD.
- The general advice at 8.5 (optimising distributions in the tax year) is even more important where the settlor and/or beneficiaries are RFDs. In particular, for settlor interested trusts, the offshore income gains position needs to be reviewed urgently to see whether it is necessary to take action prior to 6 April 2016.
- For pre 6 April 2008 trusts the making of a special election (the so called "rebasing election") will normally have been highly beneficial. If an election has not already been made urgent advice should be taken.
- The timing of capital disposals can also be critical to minimising tax liabilities (particularly for pre 6 April 2008 trusts where the election has been made) and urgent advice should be taken on this.

Dual contracts

9.16 Apart from in the first three tax years of coming to the UK (when overseas workday relief is available) it is very difficult to claim the Remittance Basis in connection with foreign earnings. This is because, in addition to needing to have a foreign employer, the Remittance Basis is only available where the duties are wholly performed outside of the UK (an exception being allowed for incidental duties). For many RFDs practical constraints meant that they could not meet the conditions so, when they can no longer claim overseas workday relief, their worldwide earnings were taxed on the Arising Basis.

9.17 Additional legislation was enacted in the 2014 Finance Act that was even more draconian. The new legislation can apply to all employees, but it is clear that senior employees were the main targets. Broadly, from 2014/15, once the overseas workday relief period is over the Remittance Basis will be removed from all senior employees with dual contracts (meaning at least one UK and one non-UK contract) with associated companies unless either: (i) the foreign tax on their non-UK contract is at least 65% of the additional UK Income Tax rate (so for 2014/15 the foreign tax will need to be at least 29.25%); or (ii) regulatory requirements necessitate the use of dual contracts. For further details see our specific September 2014 briefing note on this issue (available from the technical publications archive section of our website).

9.18 On a separate issue it is important to remember that the UK is party to agreements with respect to the coordination of social security across the EU, EEA and Switzerland. Generally this means that where an individual (regardless of domicile status) works (either as an employee, as a self-employed person or in both capacities) in more than one State and/or works in a State (or States) other than the State where he or she is resident, just one of the States will have the right to levy social security contributions on all the earnings (with special rules applying to determine which State has the taxing rights). Given the very different levels of social security contributions across the States it is recommended that advice is taken in advance to avoid surprises.

Collateral and relevant debts

9.19 As discussed above, the 2008 Finance Act introduced significant changes to the Remittance Basis. One such change was the introduction of provisions intended to tax unremitted income or gains "used" in respect of a relevant debt where the funds borrowed had been brought to or used in the UK. These provisions were, in the eyes of many, less clear and effective than those they replaced.

9.20 HMRC issued guidance on the application of the relevant debt rules to situations where unremitted income or gains were used, not directly to service said debts, but to provide collateral security. Until 4 August 2014, this guidance accepted that, so long as the debt was on commercial terms:

- the use of the unremitted Remittance Basis income and/or gains as collateral would not constitute a remittance; and
- there would only be a remittance if unremitted Remittance Basis income or gains were used to service or repay the loan (it was explicitly stated that there would be no remittance whatsoever if the loan was serviced and repaid using clean capital).

9.21 In what can only be described as a volte face, HMRC announced on 4 August 2014 that, effective from that date:

- there is an immediate remittance where a UK resident foreign domiciliary uses unremitted Remittance Basis income and/or gains as collateral for a relevant debt; and
- if the loan is serviced or repaid from different foreign income or gains, the repayments of capital and the servicing payments with respect to the interest will also constitute remittances.

9.22 If correct, this revised HMRC view means that using unremitted Remittance Basis foreign income and/or gains as collateral for a relevant debt can result in a far worse tax outcome for the individual than if he had just remitted the Remittance Basis foreign income and/or gains. This is because (in addition to the potential tax charge on the interest payments if these are funded by unremitted income and gains) there is the potential for the entire loan amount to be taxed twice (once in respect of the collateral used when the loan is taken out and once in respect of the funds used when it is repaid). The 4 August Announcement and the amendment to Guidance makes it clear that HMRC will look to assess this double charge in full and without any relief.

9.23 Initially limited transitional provisions were announced with respect to arrangements entered into prior to 4 August 2014. There was, however, a further HMRC announcement in October 2015. This extended the transitional provisions providing for grandfathering in all cases where the loan was taken out prior to 4 August 2014 and the funds were also brought into or used for UK purposes prior to then. Where you can benefit from grandfathering it is clearly important to not lose it inadvertently. We would be happy to provide advice on this difficult area.

9.24 Individuals considering taking out loans should also take advice to ensure they do not inadvertently do something that could result in an unanticipated UK tax liability.

Imminent deadlines

9.25 Take advice urgently, if you have not yet made the following claims/elections but are concerned that you should have:

- A Remittance Basis claim for 2011/12 - the deadline for making the claim being 5 April 2016.
- The capital loss election - 5 April 2016 (again being the deadline where 2011/12 is the first tax year after 2007/08 that the Remittance Basis claim was made). If the capital loss election is not made there will be no relief for foreign losses for as long as the RFD remains foreign domiciled. If the election is made, a new (not always beneficial) capital loss regime applies for UK and foreign capital losses. The issue, therefore, needs careful consideration. We would be happy to advise.

RFDs and IHT

9.26 Foreign domiciled individuals who are not deemed UK domiciled are only subject to IHT on UK situs assets. As such, UK assets (other than those that are tax exempt such as qualifying business property) should be kept at as low a level as is practical.

9.27 Typically UK situs property is the most significant UK asset that a foreign domiciliary would have or that would be within a trust settled by such an individual. To avoid such property being subject to UK IHT an offshore company has been used to acquire the property (the property generally being the only asset within the company with the potential exemption of bank account(s)). At Summer Budget 2015 The Chancellor announced that from 6 April 2017 an offshore company would no longer work as a blocker for UK IHT in such circumstances. We do not have the precise detail yet. Given all the other provisions that have been enacted it may be that it would now be better to unwind such structures and for the individuals to consider other ways to cope with the IHT exposure (possibly life insurance). However, for UK residents particularly, or where there are loans in place, unwinding may come at a significant tax cost. We do not yet know if there will be transitional provisions. Future publications will provide updates on this area.

9.28 Depending on when he or she came to the UK a foreign domiciliary's status for IHT purposes could be "deemed" to change to the UK once he or she has been UK resident for just over 15 years. Planning (potentially involving a trust structure) is necessary in the tax year before the change to prevent valuable long term IHT protection being lost.

9.29 The normal provisions that provide that all transfers between spouses/civil partners are exempt from IHT will not apply where there is a transfer from a UK domiciled individual to his or her foreign domiciled (and not deemed domiciled) spouse/civil partner. The foreign domiciliary can elect to be deemed domiciled for IHT purposes but this might not be optimal. Timing is important in such cases and we can advise on how to achieve the most tax efficient result.

9.30 Specific anti-avoidance provisions mean that debts/loans secured on UK assets will not be deducible from your UK estate on death where the funds raised from the debt/loan were used to acquire property which has "excluded property" status at the time of your death (similar provisions apply to trusts with "excluded property" when calculating the decennial charge). Specific advice should be taken, so that unpleasant surprises can be avoided.

10 Non-Residents

10.1 Effective from 6 April 2013 the UK has a statutory residence test (SRT) for the purposes of Income Tax, Capital Gains Tax ("CGT") and, in so far as it is relevant, Inheritance Tax ("IHT") and Corporation Tax.

10.2 The SRT has been designed to give a definitive answer in determining an individual's residence status. There are, however, significant potential complexities.

10.3 We have specific briefing notes (see the technical publications section of our website) that provide an overview and a detailed explanation of the SRT. Whilst there are some similarities with the old rules the SRT rules are significantly different. You cannot rely on old advice or even advice provided prior to the final SRT legislation being enacted (the SRT draft legislation going through a number of changes). New advice is required to ensure that you fall on your desired side of the residence line, if either non-residence or UK residence is important to your tax position. In addition, as the SRT position is so fact dependant, on-going reviews are advisable and new advice will be necessary if the facts change.

10.4 Pre-arrival and pre-departure planning is vital so as to mitigate tax liabilities. This is particularly the case where you are a foreign domiciliary and/or leaving the UK for a temporary period (in which case various anti-avoidance provisions may apply in the year of return). To tie in with the new statutory split year provisions, an individual leaving the UK from tax year 2013/14 onwards has to be non-UK resident for ***more than*** five years to avoid the anti-avoidance provisions, rather than for at least five tax years:

- If the taxpayer falls into one of the split year cases when leaving and/or arriving then non-UK residence for five years and a day will be sufficient (depending on dates of arrival and departure this could mean that an individual has to be non-UK resident for less time than was necessary under the old rules).
- In contrast, if neither the year of departure nor arrival can be split (such that the individual is UK resident in both tax years) the individual will need to be non-UK resident for at least six tax years (so, in such cases, an additional tax year of non-UK residence is required under the new rules in order to avoid the anti-avoidance provisions).

11 Business Tax

The tax provisions with respect to businesses are complex, with different provisions often applying depending on whether the business entity is taxed as a corporate structure or not. Specialist advice is required so that the owner/manger (for small enterprises) or shareholders (for larger companies) can extract funds from the business in the most tax efficient manner.

The following indicates some key areas where advice would be beneficial. To take full advantage of the tax benefits, and to limit the liabilities, on-going specialist tax advice is required. In addition, regular reviews are recommended to protect the trading status of a business so that the owners can make valid claims for and/or preserve entitlement to various Income Tax, CGT and IHT reliefs.

General points for businesses

11.1 Take specialist advice on how to structure staff remuneration tax efficiently so as to provide better incentives, and also save the business money.

11.2 If your business has realised a capital gain on a trading asset, it may be possible to defer the payment of the tax by timely reinvestment of the proceeds into a new asset for the purposes of the trade (the standard time limit for the reinvestment being one year before the disposal and three years after).

11.3 The annual investment allowance (AIA) gives a 100% deduction against income for capital expenditure. This is clearly valuable. It falls from £500,000 to £200,000 (remaining at this level throughout this Parliament) from 1 January 2016. Where capital expenditure can be accelerated consider trying to utilise the £500,000 AIA prior to the fall to £200,000.

11.4 For accounting periods spanning 31 December 2015/1 January 2016 the amount of AIA needs to be specifically calculated. Broadly, the limits are pro-rated but the calculations can be complicated, so advice may be helpful.

11.5 Where you have exhausted the AIA, explore whether any of the plant and machinery required can be sourced from the lists of energy saving or environmentally beneficial plant and machinery available at https://etl.decc.gov.uk/etl/site.html, as 100% Enhanced Capital Allowances (ECAs) are also allowed on such capital expenditure provided the item is on the list at the time of purchase. Note that from 1 April 2015 for companies and 6 April 2015 for individuals and partnerships, ECAs will not be available to businesses that claim other state aids (such as the Government's Plug-in Van Grant).

For partnerships

11.6 There are various complex provisions relating to partnership taxation, such as:

- the "Salaried Members Rules" applying to limited liability partnerships (established under the Limited Liability Partnership Act 2000); and
- a raft of anti-avoidance provisions aimed at all (both limited liability and unlimited liability) mixed partnerships (that is partnerships with individual and corporate members).

Specific advice should be taken to ensure that the scope of these provisions is understood and tax liabilities are not inadvertently crystallised.

For companies

11.7 Currently there is a single unified Corporation Tax, which will reduce from 20% to 19% for profits within accounting periods ending within 2017/18 and 18% for 2019/20. Consider possibilities for accelerating expenses and capital expenditure to reduce current year profit and profits in 2016/17 nd deferring income.

11.8 The lower Corporation Tax rate may make incorporation attractive for some sole traders. This is clearly a concern for the Government, which from 6 April 2016 will introduce the new dividend tax regime to make the extraction of income more expensive for business owners (there will also be anti-avoidance provisions to prevent individuals being able to turn amounts that would otherwise be taxable as income into amount being taxable as capital).

11.9 Where applicable to your business, take advice on:

- the various valuable reliefs for research and development (R&D) expenditure; and
- the patent box regime and the reliefs for expenditure on animation, high-end television production and video games.

What to do next...

This Bulletin is only intended to provide a ***brief snapshot of just some of the ways available to reduce your tax cost*** and all of the suggestions, no matter how routine they seem, need careful planning before implementation. If you have seen anything relevant to you which you are interested in considering in more detail, please call the Rawlinson & Hunter Partner who normally acts for you. If you are not one of our regular clients but would like more information or advice, a full list of Partners is provided on this page and any of them will be delighted to help you.

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