2017/18

Tax Planning Bulletin

RAWLINSON & HUNTER

The medium-term economic outlook is looking distinctly foggy! The weakness of the current Government following last year's General Election has left it short of the majority it needs to drive through its economic and Brexit policies with confidence, with factions within the Government's party competing for influence. A year after the exercise of Article 50, the negotiations with our EU partners are hardly in an advanced state, leaving the business community in a state of limbo over key issues such as access to the single market. Financial institutions are nevertheless having to take decisions over matters such as location of HQs.

For individual taxpayers, there is also uncertainty. There have been substantial changes in UK tax law, particularly those affecting non-domiciled clients from April 2017, and taking advice is more important than ever. There are always planning opportunities available to take advantage of reliefs and beneficial tax rates, and as we near the end of the 2017/18 tax year, this is the time to review what you can do.

Bespoke up-to-date advice is recommended to ensure that all relevant tax aspects are considered prior to the tax year end. This bulletin considers a range of planning ideas, some 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 2017/18 is likely to be between £100,000 and £123,000 (between £100,000 and £123,700 for 2018/19) such that, if nothing is done, your personal allowance will be incrementally withdrawn and you will suffer a 60% marginal Income Tax rate.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 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 (£11,500 for 2017/18 and £11,850 for 2018/19) 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. There are, however, anti-avoidance rules with respect to gifts to minor children where income in a tax year exceeds £100.

1.6 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.

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

Reliefs that can reduce total income

1.8 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).

1.9 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.

1.10 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).

Scottish Income Tax

1.11 Scottish Income Tax is charged on income other than savings income (savings for this purpose including dividend income). That is, in the hands of a Scottish taxpayer, the following is subject to Scottish Income Tax: employment income, self-employment income, pension income and rental income.

1.12 Broadly, a Scottish taxpayer is an individual resident in the UK (this is a fundamental principle - if the individual is not UK resident he cannot be a Scottish taxpayer) who meets one of the following three tests:

- he is a Scottish Parliamentarian (member of the Westminster Parliament; the Scottish Parliament; or the European Parliament)
- he is an individual who has a close connection to Scotland as a result of either: (i) having his sole UK residence in Scotland and for at least part of the year the individual lived in that residence; or (ii) having his main residence in Scotland for a least as much time in the tax year as he has had a main residence in another part of the UK (considered separately); or
- does not have a close connection with England, Wales or Northern Ireland and (counting

midnights, with the transit exemption) spends more days in Scotland than in any other part of the UK.

1.13 In 2017/18 the Scottish higher rate tax threshold diverged from the threshold elsewhere in the UK with the 40% rate for Scottish taxpayers coming in when they had income in excess of £43,000 in contrast to the £45,000 threshold elsewhere. The Income Tax rates, however, remained the same across the UK. This is changing from 6 April 2018. For 2018/19 Scotland will have five rates of tax: starter rate, basic rate, intermediate rate, higher rate and top rate.

Income Tax Rate	Proposed Scottish Rate	Rest of UK Rate
Starter rate	19% (between £11,850* and £13,850)	N/A
Basic rate	20% (between £11,851 and £24,000)	20% (between £11,851* and £46,350)
	21% (between £24,001 and £43,430)	N/A
Higher rate	41% (between £43,431 and £150,000)	40% (between £46,351 and £150,000)
Top rate	46% (over £150,000)	45% (over £150,000)

*Assuming the taxpayer is in receipt of the full personal allowance. This is reduced across the UK by £1 of every £2 of income in excess of £100,000.

1.14 With the difference in rates it is more important than ever to identify Scottish taxpayers. HMRC has been trying to do this. However, with self-assessment the final onus is on the taxpayer to identify their residence status. The position needs to be considered in detail. For example, where there are two properties, one being in Scotland and one elsewhere in the UK, having an English correspondence address does not mean the taxpayer is not a Scottish taxpayer and vice versa. Professional advice may be required, and we would be happy to assist.

2 Savings & 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 current 20% higher CGT rate (the 28% CGT rate only applies to non-exempt residential property and carried interest) 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 tax advice should be taken both prior to investment and before any encashment.
- The utilisation of the dividend allowance. This is £5,000 in 2017/18, reducing to £2,000 in 2018/19. Where you have portfolio dividends you will have no control over when the dividend is paid out. With a family company, if the 2017/18 allowance has not been utilised it might be possible to pay an interim dividend prior to 6 April 2018 to make use of any surplus 2017/18 dividend allowance. The significant decrease in the allowance in 2018/19 may make this particularly attractive.

2.2 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 and 1.9).

ISAs

2.3 There are now a variety of different ISA products (see below). Unless you are a Crown servant you must be UK resident to benefit from an ISA product. ISAs are a tax-free wrapper for Income Tax and CGT purposes and the income and gains do not need to be declared on self-assessment tax returns. However, 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 (IHT) purposes.

2.4 The deadline to use the 2017/18 annual allowance is 5 April 2018. If the allowance is not used it is lost. There is no carry forward of unused relief concept for ISAs.

2.5 The standard ISA allowance for 2017/18 is £20,000 for the tax year and there are no restrictions on the mix of cash/investments in a standard ISA (that is the ISA can be entirely in cash, entirely in stocks and shares, entirely in innovative finance products or a mix of all of these). Funds paid into a Lifetime ISA count towards this £20,000 allowance with a cap on annual savings in a Lifetime ISA being set at £4,000. The £20,000 overall ISA subscription limit and the £4,000 cap on subscriptions into a Lifetime ISA are frozen for 2018/19.

2.6 Lifetime ISAs were introduced from 6 April 2017 for individuals aged between 18 and 40 (contributions can continue to be made up to the age of 50). As mentioned, up to £4,000 a year can be saved. What makes a Lifetime ISA attractive is the 25% government bonus received at the end of the tax year. An individual can only have one Lifetime ISA. The funds contained within the Lifetime ISA can be withdrawn tax free in the following circumstances:

- you are buying your first home (provided the qualifying conditions are met);
- you are over 60; or
- you are terminally ill, with less than 12 months to live

Withdrawals in other circumstances will be subject to a 25% tax charge (effectively clawing back the bonus).

2.7 Savings from a Help to Buy ISA can be transferred into a Lifetime ISA. It is also possible to save into both types of ISA. However, it is only permissible to use the bonus from one to buy your first home. Note that if you transfer funds from a Lifetime ISA to a Help to Buy ISA the 25% tax charge will be due, so this should be avoided.

2.8 Help to Buy ISAs were introduced to assist first time residential property buyers. They will continue to be available until 30 November 2019 and once opened there is no limit on how long the account can remain in existence. With the exception of a permissible initial £1,200 lump sum (the monthly £200 plus an additional £1,000) the maximum amount that can be saved each month is £200 (this is a strict monthly limit).

2.9 Provided a minimum of £1,600 is saved, the government boosts the amount saved by 25% though this is capped such that if savings exceed £12,000 the bonus will only be £3,000 (at the time the house is purchased the solicitor applies for the bonus). To be eligible for the bonus the property purchased cannot be worth more than £450,000 in London and £250,000 anywhere else in the UK.

2.10 An individual can only have one Help to Buy ISA at one time. If a Help to Buy ISA is closed without the government bonus being claimed another can be opened. If there is an investment performance issue the ISA can be transferred from one bank, building society or credit union to another without forfeiting the right to the bonus on all the saved funds. There are specific rules where an individual has a cash ISA in a tax year and wants to open a Help to Buy ISA.

2.11 Consider saving for children under the age of 18, who do not have a Child Trust Fund, through Junior ISAs (£4,128 can be put into a Junior ISA for 2017/18, the same amount as can be added to a Child Trust Fund for the year with both amounts rising to £4,260 for 2018/19). From 6 April 2015 it has been possible to opt to transfer a Child Trust Fund into a Junior ISA. 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.

Tax favoured investments

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

Enterprise Investment and Seed Enterprise Investment Scheme

2.12 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 at the end of 2.15.

2.13 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.

2.14 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).

2.15 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 2018 is the deadline for making a qualifying investment that can be carried back to 2016/17 to take advantage of any unutilised capacity in that tax year. Investment should be deferred until after

5 April 2018 if capacity in both 2017/18 and 2016/17 has been exhausted.

Benefit	**EIS**	**SEIS**
Maximum investment	£1 million. 2018/19, £2 million if "knowledge-intensive"	£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.

2.16 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.

2.17 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). This will result in a potential maximum tax saving of:

- £10,000 for 2017/18 gains deferred where the gain is on chargeable assets subject to tax at the lower 10%/20% CGT rates; and
- £14,000 where the gain is on the disposal of assets subject to the higher 18%/28% CGT rates. The higher rates are charged on gains on the disposal of residential property (which is not exempt) and carried interest.

2.18 As noted at 1.8 and 1.9 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

2.19 Provided certain conditions are met, 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

2.20 Between 6 April 2014 and 6 April 2019 income tax relief is available to both resident and non-UK resident individuals who subscribe for qualifying shares or make qualifying debt investments in a social enterprise (of certain requirements) and who have a UK tax liability against which to set the relief.

2.21 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 (see 2.24) and CGT reliefs (no CGT on any gain realised on the social investment and capital gains on other assets can be rolled over into the social investment). To retain/qualify for the reliefs the social investment must be held for a minimum period of 3 years.

2.22 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.

2.23 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.

2.24 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 are likely to be required).

2.25 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 2016/17 to take advantage of any unutilised capacity in that tax year is 5 April 2018. Investment should be deferred until after 5 April 2018 if capacity in both 2017/18 and 2016/17 has been exhausted.

2.26 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.

3 Pensions

The current pension tax landscape is complex, subject to frequent change and decisions cannot be taken without both specialist pension investment advice 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 There will be a one-off tax charge, when benefits are drawn, if the value of your total pension funds exceeds the lifetime allowance (currently £1 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.

3.3 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. The standard (see 3.4 for taxpayers with adjusted income over £150,000) total available annual allowance for 2017/18 is £40,000 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 2018) if you think the annual allowance may be exceeded.

3.4 The pension relief available to taxpayers with adjusted income over £150,000 is reduced. The standard £40,000 annual allowance referred to above 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.

3.5 Adjustments are made to the annual allowance where members make use of the flexibility introduced with respect to accessing money purchase funds (see 3.15 to 3.17).

3.6 The ability to utilise any unused annual allowance from 2014/15 will be lost if it is not used before 5 April 2018. 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 2014/15 amount it will be necessary for total contributions in 2017/18 to cover the allowance for 2017/18 and the unutilised capacity in 2014/15.

3.7 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.

3.8 As explained in previous years' Tax Planning Bulletins and in our specific briefings (see www.rawlinson-hunter.com/technical-updates/) 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 million. Depending on the protection election you made, specified strict conditions may apply with respect to additional pension contributions that can be made.

3.9 It is important for an individual who has made a Fixed Protection 2014 (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.

3.10 The £1 million lifetime allowance figure came in from 6 April 2016. Where an individual, who had total UK tax relieved savings in excess of £1 million on 5 April 2016, does not have a higher lifetime allowance as a result of claiming protection when one of the earlier lifetime allowance reductions occurred, there are two forms of protection to consider. These are Fixed Protection 2016 ('FP16') and Individual Protection 2016 ('IP16').

3.11 Those who register for FP16 and do not break the qualifying terms (the main condition being to not make any further contributions after 5 April 2016, though individuals with final salary schemes are allowed to accrue further benefits provided they do not exceed a specified percentage) will have a lifetime allowance equal to the higher of £1.25 million and the lifetime allowance at the time the individual takes their pension benefits. For example, assuming the lifetime allowance does not increase to above £1.25 million the individual making the election will have the £1.25 million lifetime allowance. He will not be able to make any additional pension contributions but if his pension benefits were standing at £900,000 as at 5 April 2016 he may be expecting the growth in his pension plan to be such that it will exceed the current £1 million lifetime allowance and mean that the election is worthwhile (since, provided it is not forfeited, it will preserve his entitlement to the £1.25 million lifetime allowance). If growth is worse than expected he always has the option of forfeiting the protection and making further contributions.

3.12 Individuals with IP16 will have a lifetime allowance worked out as follows:

- step one – establish the lesser of £1.25 million and pension savings as at 5 April 2016 (which must be in excess of £1million); and
- step two – take the higher of the figure in step one and the lifetime allowance at the time the individual takes their retirement benefits.

For example, assuming the individual has pension benefits of £1.2 million he can apply for IP 16 protection, will have a special protected lifetime allowance of £1.2 million and will not have to stop making pension contributions.

3.13 In contrast to the transitional provisions in prior years there are no deadlines for registering for either FP16 or IP16.

3.14 The application process for FP2016 and IP2016 is online via a self-service portal. Full details are available at https: //www.gov.uk/guidance/pension-schemes-protect-your-lifetime-allowance. Various information must be provided and declarations made. The online system will then provide the individual with a response to the notification and a protection reference number. The protection reference number will then need to be passed to the pension scheme so that it will apply the higher lifetime allowance when benefits are taken.

Flexible Pensions

3.15 Various measures were 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.

3.16 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 regulated pensions expert.

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

4 Capital Gains Tax

4.1 Have you used your annual exemption for 2017/18 of £11,300 (rising to £11,700 in 2018/19)? 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 rate, rather than the lower 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 The CGT rates for 2017/18 remain low (and will not increase in 2018/19). The main rates for individuals are 10%/20% (depending on the availability of surplus basic rate band). Even the 18%/28% rates on the disposal of residential property (that is not exempt) and carried interest are significantly lower than the 40% higher and 45% additional Income Tax rates.

4.4 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 made, consider transferring/splitting ownership of assets standing at a gain.

4.5 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).

4.6 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 2018 is the deadline for claims that assets became of negligible value in 2015/16.

4.7 Is it possible to defer disposals that are going to realise a gain (in excess of your available annual exemption and any unutilised capital losses) until after 5 April 2018? 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 rate in 2017/18, as such deferral may result in CGT being payable at the higher rate.

4.8 Entrepreneurs' Relief (ER) can currently save an individual up to £1 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. In particular, regular reviews are recommended to protect the trading status of a business so that the owners can make valid claims for ER (and/or to preserve entitlement to various other tax reliefs).

4.9 Care should be taken where there are to be transfers between spouses/civil partners, as for ER purposes 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 2013/14 is 5 April 2018 (4 years after the end of the tax year). This is also the deadline by which business and gift holdover relief elections should be made.

5 Inheritance Tax

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 surviving spouse/civil partner. A tax efficient Will coupled (where necessary) with a judicious lifetime giving strategy (using trusts where appropriate - see section 9) can reduce its impact significantly.

5.2 In addition to the standard nil-rate band individuals have a residence nil rate band (rising incrementally from £100,000 in 2017/18, to £125,000 in 2018/19, £150,000 in 2019/20 and finally £175,000 in 2020/21), where a home is passed to direct descendants. 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. Similar to the standard nil rate band any unused residence nil rate band will be transferable to a surviving spouse or civil partner.

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 (such as assets qualifying for Business Property Relief) is left to legatees with respect to whom the transfer of value will not be exempt, and not to a spouse.
- 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 (though not gifts with respect to a referendum campaign);
- transfers between spouses/civil partners of the same domicile for IHT purposes (that is taking deemed domicile into account and a deemed domicile spousal election can be made to benefit from the exemption).

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 2018.

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 agricultural or business 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 will alter the terms of such loans.

5.14 There is a special reduced 36% IHT rate on death where at least 10% of a person's net estate is left to charity (see 7.7).

6 Residential Property Issues

6.1 There have been many changes to the taxation of residential property since 2012. This section will summarise the state of the current landscape. As discussed in our November 2017 Budget Briefing, the Chancellor announced and there has been subsequent consultation on the extension of CGT and Corporation Tax to disposals of all types of immovable UK property by all non-residents (individuals, companies, trusts and personal representatives), for gains accruing on or after April 2019.

6.2 As well as direct disposals CGT or Corporation Tax is to be charged on indirect disposals of interests in UK land by non-UK residents. Indirect disposals will arise in situations where a non-resident disposes of an interest in a "property rich" entity (simplifying, where 75% of its gross asset value, excluding liabilities, is represented by UK immovable property), and at the date of disposal, or in the previous five years, the non-resident (alone or with related parties) holds, or has held, an interest of 25% or more in the entity.

6.3 As with previous extensions of CGT to non-UK residents for new property brought within the charge, there are transitional provisions with respect to the gain accruing prior to April 2019 (rebasing being the default option).

Letting out residential property

6.4 The finance costs deduction allowed against income where a loan is taken out to provide financing for a property that is let residentially is being restricted (though this does not apply to corporate landlords or where the property is a furnished holiday let). Broadly, the restriction is being phased in over four tax years as follows:

- in 2017/2018 only 75% of finance costs can be deducted against income, with the remaining 25% being available as a basic rate tax reduction;
- for 2018/2019 only 50% of finance costs will be able to be deducted against income, with the remaining 50% given as a basic rate tax reduction;

- for 2019/2020 only 25% of finance costs will be able to be deducted against income, with the remaining 75% given as a basic rate tax reduction; and
- for 2020/2021 the only relief for finance costs incurred by a landlord will be by way of a basic rate tax reduction

6.5 This is a highly significant change and the cashflow impact has to be considered carefully by individuals who have significant borrowing. It may be that re-financing needs to be considered and/or a sale of one or more of the let properties. This is particularly the case in view of the CGT rates (non-exempt residential property suffers the higher 18%/28% CGT rates but, as mentioned already, the 28% higher rate is still significantly lower than the 45% additional Income Tax rate and, whilst we know there will be no rate changes for 2018/19, an alignment of rates cannot be ruled out at some point). Specialist tax advice is recommended to ensure that the strategy adopted is tax efficient.

6.6 The impact on payments on account also needs to be taken into account, so that reduction claims are not made without having considered the increase in land and property profits that the changes will result in.

Non-resident CGT on the disposal of UK residential property

6.7 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.

6.8 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.

6.9 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

6.10 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. Where main residence relief has been available you can also benefit from the 18-month final period relief and potentially 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).

6.11 Given the potential importance of main residence relief advice should be taken. This is particularly the case where there are multiple residences such that the main residence nomination is in point.

6.12 Very broadly, where there are multiple residences and the individual is resident in the same jurisdiction as the location of the property with respect to which the nomination has been made, the nomination will automatically be valid for the tax year. Where the individual is not resident in the country where the property is located, a day count test is applied. Where the individual ("P") has owned the nominated residence 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 residence itself and any other residence 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
- Y 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 residence by one spouse or civil partner will be regarded as occupation by the other (there is no double counting).

High Value Residential Property Owned by Bodies Corporate

6.15 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.

6.16 The penal SDLT rate and the ATED charge:

- were extended with effect from April 2015 to properties that were worth in excess of £1 million as at 1 April 2012 (or the acquisition date if later); and
- were extended with effect from April 2016 to properties that were worth in excess of £500,000 as at 1 April 2012 (or the acquisition date if later).

In both cases ATED-related CGT came in from 6 April on the properties brought within ATED but with the base cost uplifted to the value immediately before the property came within the scope of ATED-related CGT. For example, a property valued at £0.7 million as at 1 April 2012 will have come into the ATED charge from 6 April 2016 (assuming no exemption or relief applied) and the base cost will be the 5 April 2016 value of the property (though if this is lower than the actual cost then it is possible to opt out of rebasing).

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

6.18 The ATED return and the payment of the tax for 2018/19 are both due by 30 April 2018. It is important to remember that we are now five years into ATED, which means that for properties held at 1 April 2017 the reference property value will now be the market value as at 1 April 2017 (rather than 1 April 2012). The ATED charges for 2018/19 are as follows:

Property Value	Charge
More than £0.5 million but not more than £1 million	£3,600
More than £1 million but not more than £2 million	£7,250
More than £2 million but not more than £5 million	£24,250
More than £5 million but not more than £10 million	£56,550
More than £10 million but not more than £20 million	£113,400
More than £20 million	£226,950

6.19 The provisions are complex, and the ATED charges for properties worth more than £2 million are significant. As such, making best use of the reliefs is particularly important. For example, forfeiting entitlement to letting 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.

Extension of IHT to overseas property representing UK residential property

6.20 Domicile rather than residence is the crucial concept when considering an individual's exposure to IHT.

6.21 Foreign assets (referred to as "excluded property") are outside the scope of IHT when owned by individuals who are neither UK domiciled nor deemed domiciled, or by trusts settled by individuals who met those criteria at the time the settlement was made. Up to 6 April 2017, there were no "look through" provisions for IHT, so UK assets could be held within a foreign company, or similar opaque foreign entity, and be effectively excluded by such means. This technique ('enveloping') was frequently used to shelter UK residential property from IHT. Prior to 6 April 2017 it continued to be effective for IHT, albeit at the potential cost of exposure to the Annual Tax on Enveloped Dwellings ("ATED") charge since 2013. Indeed, the IHT benefit was a significant factor in discouraging de-enveloping when ATED was introduced in 2013 (along with the lack of any SDLT relief or CGT roll-over).

6.22 The new rules are complicated but, summarising, from 6 April 2017, interests in offshore companies which would be close companies if UK resident ('foreign close companies'), interests in similar opaque entities and interests in partnerships, are no longer excluded property if and to the extent that the value of the interest is attributable to UK residential property. Where the rules apply to the property all of the normal IHT chargeable event provisions will apply.

6.23 From 6 April 2017, the following is also within the scope of IHT:

- "Relevant loans" - broadly a loan is a relevant loan if money or money's worth has been made available to an individual, a partnership or a trustee for: (i) the acquisition of a UK residential property interest; (ii) the making or repayment of a loan to finance the acquisition; (iii) the maintenance of the UK residential property interest; or (iv) the enhancement of the UK residential property interest.
- Money or money's-worth held or otherwise made available as security, collateral or a guarantee for a relevant loan.
- For a period of two years after the disposal the disposal proceeds from the sale of a qualifying

property interest and, for a period of two years after receipt, funds on the repayment of a relevant loan. These rules only apply to sales proceeds and loan repayments after 5 April 2017.

De-enveloping?

6.24 Cumulatively the tax changes mean that in cases other than where property is being let there is no UK tax reason for holding a UK residential property within an enveloped structure unless the costs of unwinding the structure are prohibitive. Where there are existing structures, specialist tax advice should be taken with the tax consequences of closing down the structure assessed against the tax costs of keeping it.

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 then 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 specified 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 since the individual would have been subject to Income Tax, not CGT, 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 UK Resident Foreign Domicilliaries

Deemed domicile

8.1 As expected Finance (No 2) Act 2017 enacted the concept of deemed domicile with retrospective effect to 6 April 2017.

8.2 Anyone born in the UK with a UK domicile of origin (defined as a "Formerly Domiciled Resident" or "FDR") who is UK resident in a tax year is deemed domiciled in the UK for all tax purposes (subject to a period of grace for Inheritance Tax (IHT) if the individual was not UK resident in either of the preceding two tax years). Generally, such individuals will never be able to access the Remittance Basis and after the period of grace will be subject to IHT on worldwide assets. In addition (and even more penal) after the period of grace all trusts established by the FDR will be unable to benefit from excluded property status whilst the individual is UK resident and will be fully subject to UK IHT.

8.3 Broadly, where FDRs have significant wealth (particularly within trusts), remaining non-UK resident will be the only good solution. If periods of UK residence in excess of a year are necessary (such that the period of grace will no longer apply) life insurance should be considered.

8.4 A long term resident (LTR) – one who has been UK resident in at least fifteen of the immediately preceding twenty tax years – is deemed domiciled for all tax purposes. Provided they are not also FDRs, such individuals may be able to benefit from reliefs/transitional provisions (rebasing and mixed fund cleansing). Where they are the settlor and beneficiary of an offshore trust an LTR (who is not also a FDR) can also benefit from valuable trust protections. If it has not been taken already, specialist advice should be sought urgently to prevent trust protections being lost inadvertently. This is a particular issue where there are loans in the structure either in relation to the settlor or a trust in relation to which the settlor is either also a settlor or a beneficiary.

8.5 The one circumstance where deemed domiciliaries will be able to access the remittance Basis is where their unremitted income and gains for the tax year are below the £2,000 de minimis level. This is purely pragmatic since the tax at stake means that it would not be cost effective, administratively for the Exchequer to have such individuals submit self-assessment tax returns in order to provide details of their unremitted foreign income and/or gains.

8.6 Rebasing relief enables qualifying individuals to calculate gains on qualifying foreign assets held by reference to the market value of the asset as at 5 April 2017. The rebasing applies to non-reporting funds (where Income Tax is payable on the gain) as well as chargeable assets. It does not, however, apply to deep discounted securities or life policy gains (since the chargeable amounts are not computed as chargeable gains).

8.7 Rebasing relief is only available in respect of assets held directly by a qualifying individual. It applies to:

- qualifying foreign assets that another person holds as nominee for the qualifying individual;
- the qualifying individual's share of qualifying foreign assets belonging to a UK partnership (including LLPs); and
- the qualifying individual's share of qualifying foreign assets belonging to a transparent foreign situs partnership (including LLPs).

8.8 To benefit from rebasing an individual:

- must not have been born in the UK with a UK domicile of origin.
- must have become deemed domiciled on 6 April 2017.
- must be deemed domiciled under the 15 out of 20 test throughout the relevant tax years (defined below).
- must not be domiciled in the UK under general principles throughout the relevant tax years
- must have held the asset at 5 April 2017, with the disposal taking place after that date.
- must have been foreign situs throughout the period from 16 March 2016 (or if acquired later, the date of acquisition) to 5 April 2017. The asset is not regarded as situated in the UK where it has been brought to the UK and one of the remittance exemptions applies
- must have paid the Remittance Basis Charge at least once for a tax year prior to 6 April 2017.

The relevant tax years are 2017/18 up to and including the tax year during which the asset is disposed of.

8.9 Rebasing relief will be extremely valuable for some individuals. However, given the qualifying conditions the individuals who can qualify for rebasing will be limited. In addition, breaching one of the conditions at a later date, prior to the disposal of an asset that would otherwise qualify for the relief, is a risk so specialist advice should be taken.

8.10 As mentioned, there is a special two year transitional relief allowing for the segregation of one or more of the income, gains or capital elements in a mixed fund account, providing the re-arrangement occurs in the period from 6 April 2017 to 5 April 2019. The provisions allow an individual to segregate out capital that could be brought to the UK with no tax charge and/or income and gains that can be remitted with a low tax charge (segregating gains which can be brought to the UK at lower rates and also segregating income and gains with foreign tax credits). To qualify individuals must have been Remittance Basis users in at least one tax year between 2008/09 and 2016/17. The rules are complex and again specialist advice should be taken.

8.11 If this has not already been carried out, 2018/19 planning should be considered where 2018/19 will be the first year an individual is deemed UK domiciled. In addition, it is not too early to start planning where 2019/20 (or even 2020/21) will be the first year that an individual will be deemed UK domiciled. This is particularly the case if it is possible that you will want to avoid deemed domiciled status by becoming non-UK resident (a minimum of six complete tax years of non-UK residence being required to achieve this). Depending on your current lifestyle that might be very easy to achieve, or it may need some advanced planning.

The Remittance Basis

8.12 UK resident foreign domiciliaries, who are not deemed domiciled, can access the Remittance Basis of taxation (such individuals will be referred to as RFD's). 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.

8.13 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. Once an individual has been UK resident in at least seven of the immediately preceding nine tax years the Remittance Basis Charge (RBC) is also payable.

8.14 There are two levels of RBC depending on the length of residence (with the individual becoming deemed domiciled if they stay long enough to have been UK resident in fifteen of the immediately preceding twenty tax years). For 2017/18 the RBC charge is as follows:

- £30,000 where the RFD was UK resident in at least seven of the nine tax years immediately preceding 2017/18 but not UK resident in as many as twelve of the fourteen tax years immediately preceding 2017/18;
- £60,000 where the RFD was UK resident in at least twelve of the fourteen tax years immediately preceding 2017/18 but not UK resident in as many as fifteen of the twenty tax years immediately preceding 2017/18.

This will not change for 2018/19.

8.15 If this has not already been carried out, 2018/19 planning should be considered if 2018/19 will be the first year that the £30,000 or £60,000 RBC will be payable. In addition, it is not too early to start planning where 2019/20 will be the first tax year that the standard or higher RBC will be payable.

8.16 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.

8.17 Where both are RFDs with similar residence patterns 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.

The remittance basis definition and avoiding inadvertent remittances

8.18 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;
- where the funds are required for a specific purpose, one of the on-going exemptions (such as business investment relief) might be helpful;
- if the funding to be used traces back to pre-6 April 2008 relevant foreign income, one of the 2008 transitional reliefs might be in point such that the funds can be remitted with little or no UK tax liability; and
- the Finance (No 2) Act 2017 transitional reliefs discussed at 8.6 to 8.10 above may be helpful.

8.19 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 participator.

8.20 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.

8.21 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.

Collateral and relevant debts

8.22 Finance Act 2008 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.

8.23 HMRC issued guidance on the application of the relevant debt rules to situations where unremitted income or gains were used, not directly to service the 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).

8.24 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.

8.25 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 different 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.

8.26 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.

8.27 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 (or at least a liability under HMRC's interpretation of the law).

Dual Contracts

8.28 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 UK resident foreign domiciliaries practical constraints mean that they cannot meet the conditions so, when they can no longer claim overseas workday relief, their worldwide earnings are taxed on the Arising Basis.

8.29 Additional legislation was enacted in Finance Act 2014 that is 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 2017/18 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 (see www.rawlinson-hunter.com/technical-updates/).

8.30 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.

Imminent deadlines

8.31 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 2013/14 - the deadline for making the claim being 5 April 2018.
- The foreign capital loss election - 5 April 2018 again being the deadline where 2013/14 is the first tax year after 2007/08 that the

Remittance Basis claim was made. If the foreign capital loss election is not made there will be no relief for foreign losses for as long as the UK resident foreign domiciliary remains foreign domiciled (and not deemed UK 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.

Foreign domiciliaries and IHT

8.32 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.

8.33 Typically UK situs real estate 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 historically been used to acquire the property (the property generally being the only asset within the company with the potential exception of bank account(s)). For a number of years this has been frowned on where the property was the individual's main residence as a result of other considerations. Now, however, it does not work for IHT purposes (as discussed in section 6).

8.34 As explained in 8.4, a RFD (who was not born in the UK with a UK domicile or origin) becomes deemed UK domiciled in the first tax year where they were UK resident in at least fifteen of the immediately preceding twenty tax years. Planning (potentially involving a trust structure) should be considered in the tax year before this vital change, so as to prevent valuable long term IHT protection being lost. The level of wealth to be sheltered will determine the level of planning required. After due consideration, for some young and healthy individuals a life insurance policy may be all that is necessary.

8.35 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.

8.36 Specific anti-avoidance provisions mean that debts/loans secured on UK assets will not be deductible 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.

9 Trust Planning

General points

9.1 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 the deemed gain triggered on the transfer of a chargeable asset to a settlor-interested trust, meaning that both CGT and IHT may be payable.

9.2 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.

9.3 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).

9.4 The income and capital distribution strategy should be reviewed prior to 6 April 2018. 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.

9.5 Whilst not a pre-6 April 2018 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.

Alternatives to trusts

9.6 A Family Limited Partnership (FLP) might be a viable tax efficient alternative to a trust, or a Family Investment Company (an increasingly attractive vehicle in the right circumstances). Specialist advice should be taken.

10 Offshore Trusts

General

10.1 In the right circumstances offshore trusts can still be highly beneficial for foreign domiciliaries. However, unadvised actions taken by trustees of offshore trusts can significantly disadvantage the settlor and/or beneficiaries. In particular, with the Finance (No 2) Act 2017 changes and the changes that will be enacted in Finance Act 2018, it is absolutely critical that (if they have not done so already) trustees take urgent advice from specialist tax advisers. There may be urgent actions the trustees need to take (such as adjusting loan terms prior to 6 April 2018) and, if the settlor is deemed domiciled (and not a FDR), there will be actions that they must refrain from taking.

10.2 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).

10.3 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.

The changes

10.4 As set down in our various briefing notes issued in 2017, Finance (No 2) Act 2017 and (what will be) Finance Act 2018 between them introduce fundamental changes to the taxation of offshore trusts. The scope of the changes is such that they do not apply exclusively to foreign domiciliaries. The changes are extraordinarily complex. The paragraphs below provide a highly simplified overview (more detail is given in our latest briefing).

10.5 From 6 April 2017 for all trusts established whilst an individual is not deemed UK domiciled (provided the individual is not a FDR in which case he or she will be subject to the trust anti-avoidance provisions in the same way as a UK domiciliary):

- The transfer of assets abroad (ToAA) provisions are fundamentally altered such that where the trust receives protected foreign source income (PFSI) the transferor charges are switched off and the benefits charge is extended so that it applies to all foreign domiciled settlors of non-UK resident trusts. LTRs will, however, fall out of this new regime and into the regime for UK domiciled settlors if the trust becomes tainted (explained below).
- For PFSI the settlements' regime is switched off. Again, LTRs will fall out of this new regime and into the regime for UK domiciled settlors if the trust becomes tainted
- For CGT purposes an LTR (who is not also a FDR) will continue to be subject to tax on trust gains only if a capital payment is received, but again this protection will be lost if the trust becomes tainted.
- For ToAA purposes only, a close family member attribution rule is introduced.

10.6 Where an individual is an LTR and the trust is tainted they will be taxed as UK domiciliaries with respect to the trust income and gains. A trust is tainted where non- qualifying property or income is provided directly or indirectly for the purposes of the settlement. This is complex and trustees need to take specialist advice. Of particular urgency is a review of loans within the settlement as where the settlor is deemed domiciled in either 2017/18 or will be in 2018/19 action may need to be taken prior to 6 April 2018.

10.7 From 6 April 2018:

- The CGT attribution of gains to beneficiaries legislation is fundamentally overhauled with washing out of gains to non-UK residents no longer being possible.

- The settlements' legislation is changed fundamentally with a benefits charge modelled loosely on the ToAA charge being introduced to tax PFSI at the trust level where ToAA does not apply because the motive defence is in point.
- Close family member attribution provisions are included in the settlements' legislation and the CGT attribution of gains to beneficiaries legislation. The Income Tax provisions are similar with the CGT provisions being wider (though the close family member definition is aligned).
- Complex onward gift provisions (referred to originally as anti-conduit or anti-recycling provisions) are introduced into all three sets of anti-avoidance legislation. Very broadly, the provisions are intended to prevent UK tax being avoided by a trust making a distribution to an individual who will not pay UK tax on it and that individual then making an onward gift to an individual who would have paid UK tax if the distribution had been made to him or her directly. The provisions apply to onward payments made after 5 April 2018 even if the original distribution was made prior to 6 April 2018.

10.8 The changes coming in from 6 April 2018 are huge and trustees need to be well advised. In particular urgent advice should be considered (if advice has not already been taken) as it might be advantageous to trust beneficiaries for certain actions to be taken (or advice given to beneficiaries) prior to 6 April 2018.

11 The extension of disguised remuneration rules

11.1 Finance (No 2) Act 2017 and (what will be) Finance Act 2018 introduce changes to the disguised remuneration rules. The legislation is complex and the new close company gateway legislation in particular is very wide (potentially applying in a private trust situation where there is an underlying company). If you think you may be affected you should seek specialist tax advice.

11.2 The new charge on the pre-9 December 2010 loans that have (provided no change was made) hitherto been grandfathered has been enacted. With very limited exceptions this charge will be imposed on the outstanding value of the loan as at the end of 5 April 2019. Tax and (potentially) national insurance will be due on any outstanding balance.

11.3 In 11.2 above the word "potentially was used with respect to national insurance as not all individuals who are affected by this legislation will be subject to UK social security.

12 Non-Residents

12.1 Effective from 6 April 2013 the UK has a statutory residence test (SRT) for the purposes of Income Tax, CGT and, in so far as it is relevant, IHT and Corporation Tax. Whilst there are some similarities with the old rules, the SRT rules are significantly different. We have specific briefing notes (see the technical publications section of our website) that provide an overview and a detailed explanation of the SRT.

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

12.3 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).

12.4 Note that where a foreign domiciliary (who was not born in the UK with a UK domicile or origin) has become deemed domiciled he or she will need to be non-UK resident for six entire tax years to shed UK domicile status. Doing so will mean that the domicile clock is re-started, the temporary non-UK resident anti-avoidance rules do not apply and that, if relevant, overseas workday relief can be claimed.

13 The requirement to correct

13.1 New legislation imposes a requirement on taxpayers with outstanding offshore non-compliance (meaning Income Tax, CGT or IHT due as a result of offshore matters or offshore transfers) as at 5 April 2017 to correct the position (by providing the relevant information to HMRC generally by way of using the Worldwide Disclosure Facility) on or before 30 September 2018.

13.2 Unless reasonable excuse can be argued successfully, if this deadline is not met and offshore non-compliance is discovered, severe penalties can potentially be imposed (depending on the circumstances and the seriousness of the case):

- The standard "failure to correct" penalty has been set at 200% of the tax due but it can be reduced to 100% to reflect the quality of any disclosure, the level of co-operation and the seriousness of the matter.
- An asset based penalty.
- An assets moves penalty.
- Having your details published as a serious defaulter.

13.3 With the first batch of data under the Common Reporting Standards information exchange due to arrive around the time of the disclosure deadline HMRC will have more information than ever about offshore assets. This is why it feels able to move away from the more lenient disclosure facilities of the past. The "Requirement To Correct" is the last chance taxpayers have to get their historic affairs in order before the tougher penalty regime goes live.

13.4 If you have any concerns about offshore non-compliance you should take specialist advice urgently, so that if there is an issue there is sufficient time to make the neccessary disclosure to HMRC.

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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.