Tax Insider
HOW TO BEAT THE TAXMAN AND BOOST YOUR INCOME!

Issue 23
November 2007

Inside this Issue

Feature Article 1-2

Another layer of TAAR - Capital Gains Tax and Relief for Losses

By James Bailey

Insider Tax Tips 2

Business Tax Insider 3

Bad News for Non-Doms? - Putting a Price on the "Remittance Basis"

By James Bailey

Personal Tax Insider 4

Is your journey really necessary? - Employees' travel and subsistence

By James Bailey

Property Tax Insider 5-6

Zero carbon, zero SDLT

By Sarah Bradford

VAT Insider 7

HMRC Confirm Introduction of Revised Invoicing Requirements from 1 October 2007

By Andrew Needham

Question & Answers 8

Another layer of TAAR - Capital Gains Tax and Relief for Loss

By James Bailey

HMRC have managed to include a "Targeted Anti-Avoidance Rule" (or TAAR) in the last two Finance Acts. The 2006 one applied to companies, and the 2007 one applies to individuals and Trustees.

If you sell an asset and realise a capital loss, you can set that loss against any capital gains in the same tax year, and if there are no such gains you can carry the loss forward to the next tax year and set it against gains in that year, and so on.

It therefore makes sense, if you have an asset that will realise a capital loss, to dispose of it in the same tax year as you dispose of another asset that will realise a capital gain.

The TAAR, however, will prevent you from setting that loss against the gain if:

- The loss arises as a result of "arrangements"

AND

- The main purpose, or one of the main purposes, of those "arrangements" is to gain a "tax advantage"

What are "arrangements"?

These are very broadly defined, and the "arrangements" in question do not have to be

legally enforceable. They include any "agreement, understanding, scheme, transaction or series of transactions"

It is likely to be a waste of time to argue that there were no "arrangements".

What is a "tax advantage?"

Again, the definition is very widely drawn, and includes a repayment, a reduction in an assessment, a relief from tax, and the reduction or avoidance of a charge to tax.

Once again, it is unlikely to be possible to argue there was no "tax advantage" if you are targeted by HMRC.

"Main Purpose"

This is where the arguments will occur. In order to restrict your loss relief, HMRC have to show as a minimum that "one of the main purposes of the arrangements" was to obtain a tax advantage.

Examples

HMRC have published examples of "arrangements" they consider to be caught by the TAAR, and others which they say are not. There are some curious anomalies in the examples.

I cannot really quarrel with some of the examples. One of the most elegant (and outrageous!) involves setting up a trading company with a small share capital (say, £20), and selling it to a helpful friend who injects a huge amount of share capital into it (say, £1 million) and then sells it back to you for £1 million in less than 30 days. The rules for matching disposals with acquisitions mean that the sale is identified with the subsequent acquisition and so you have just made a CGT loss of £999,980 - and because this is a trading company you can claim the loss against your income for the tax year!

A neat piece of artificial tax avoidance, which no longer works, because of the TAAR.

There are several examples of what is known in the trade as "bed and spousing". It used to be standard tax planning to "bed and breakfast" shares at the end of each tax year, either to realise losses, or to make gains to use up the Annual Exempt Amount (currently £9,200). You sold the shares, and bought them back the next day, hence the name "bed and breakfasting". The 30 day identification rule referred to above was introduced to stop this practice, and it means that you have to wait for over 30 days before repurchasing the shares in order not to have the sale identified with the repurchase. During this time, of course, you are exposed to changes in the price of the shares.

Your spouse, however, could buy the shares back on the same day as you sold them, and then give them to you. The gift is a "no gain, no loss" transaction, and you have achieved the same effect as the old "bed and breakfast" trick.

The TAAR, however, will catch this transaction and deny you relief for the loss you made on the shares.

There are numerous variations on this in HMRC's examples, and my favourite is the one where "Mr H" sells his loss-making shares, and "unbeknown to Mr H", his wife buys the same shares back. According to HMRC, the TAAR will not apply here, because "there was no main purpose of obtaining a tax advantage".

I sometimes wonder whether HMRC live in the same world as the rest of us. I have a mental picture of Mrs H blocking her ears and humming loudly (for tax reasons) while Mr H is on the phone to his stockbroker, and then Mr H doing the same while Mrs H makes her phone call.

An interesting variation of this example has Mr H owning some shares standing at a loss, which he gives to Mrs H, who then sells them together with her shares in a different company which make a gain. You might think the TAAR would apply, but not according to HMRC's guidance - they say this is a "straightforward" transaction and is not caught.

The problem with all these examples, and with the concept of the TAAR itself, is that it is so subjective. The law now says "you cannot have relief for losses if we think you are being a bit too clever in the way you arrange things", which effectively means your tax liability depends on how an inspector feels about the transactions concerned. It is as if there were no speed limits on the roads, and instead there was an offence of "driving faster than the police think you should".

I think this is a very worrying trend in the legislation, and it is not going to stop with this particular TAAR. There is likely to be another one in the 2008 Budget aimed at family companies and the payment of dividends, and HMRC continue to push for their ultimate goal - a GAAR. If I tell you that "G" here stands for "General", I think you can guess what the other words are!

TAX TIPS

• Good news for those with small income tax bills

- The threshold for making payments on account of your self-assessment tax liability has been raised from £500 to £1,000 - but don't celebrate too soon - it only applies from 2009/10

• HMRC have announced a new initiative for tax investigations.

It's called "Openness and Early Dialogue", which is being introduced on a trial basis from this month. Instead of the current secretive and ponderous investigation process, this envisages some investigations being started and finished all in the same day, over a nice cup of tea. No time to write more - Control Tower inform me that the pigs are fully fuelled and ready for take-off!

• "There is no equity in tax".

In a recent recruitment drive, HMRC quoted one of their new recruits as saying she found her training gave her experience of "how to debate principles with accountants". I should like to reassure my clients that I have never debated "principles" with a tax inspector. The proper subjects for debate with Revenue officials are matters of fact and law.

• Do you run a high-tech business?

Make sure you are claiming any "Research and Development Tax Credit Units" to which you are entitled. HMRC issued a Press Release on 1 November to celebrate payments of £150 million to such companies last year. Let's try to give them even more to be proud of next year.

• Renovations and alterations

To residential property attract a reduced VAT charge of 5% (rather than 17.5%) if the property has been empty for three years. With effect from 1 January 2008, this period is being reduced to two years.

• "nil rate bands"

HMRC have published details of the deemed "nil rate bands" for inheritance tax that apply to widows and widowers whose spouses died before 9 October 2007 (see last month's Tax Insider for why this is important). For your information, this confirms that the nil rate band for a death in 1914 was £100

• VAT on room deposits

Businesses that have accounted for VAT on room deposits that they retained when customers failed to show up, may be due a VAT refund. On 18 July 2007, the ECJ released its judgment in the case of Société Thermale d'Eugénie-les-Bains (C-277/05), which examined whether any VAT was due on so-called 'no show' deposits. The Court went against the AG's opinion, and held that the deposits were effectively a form of compensation for a lost booking, and was thus outside the scope of VAT. This case has, in effect, overturned the 1993 High Court decision in Bass plc, which said that forfeited deposits were payment for the standard-rated service of keeping the room free. The ECJ case has also opened up a wider debate on the liability of any other forfeited deposits, not just those for accommodation.

Bad News for Non-Doms? Putting a Price on the "Remittance Basis"

By James Bailey

The days leading up to the Pre-Budget Statement on 9 October saw an undignified game of "tit for tat" between Alistair Darling (or, let's be honest, his puppet-master Gordon) and the Shadow Chancellor, George Osborne. The results were a piece of legislation on Inheritance Tax which had been gathering dust in a drawer in Number 11 Downing Street since March (when the Treasury told Gordon he couldn't have transferable Nil Rate Bands for IHT and show off by cutting the basic rate of income tax), an ill thought out hike in capital gains tax (to pay for the Nil Rate Band stunt), and a spiteful piece of legislation aimed at the less well off non-doms.

A "non-dom" is someone who, though they may be resident in the UK, is not "domiciled" here. "Domicile" is a curious and anachronistic concept, which dates back to the days of Empire, when lots of UK citizens were out of the country ruling the world, but still needed to be taxed in the UK to pay for the running costs of Rule Britannia plc.

Your domicile is the country you call home. When you are born, you are assumed to have your father's domicile, and until you are an adult, yours follows his, as your "domicile of origin". Once you are a grown-up, you can acquire a new "domicile of choice", if you move to another country and settle there.

When I say "settle" I mean really uproot from the old country (wherever that may be) and commit permanently to the new country. The old chestnut was that if you wanted to become domiciled in a new country, you bought yourself a burial plot there, as a sign that you had no plans to leave, but this is a simplistic view of the matter.

Essentially, you retain your domicile of origin if you do not show a clear intention to reside permanently in another country. I recently acted for a very old gentleman who had left his country of birth due to political problems, and had lived in the UK for over 50 years, raising a family here. He always swore he would return to his native land if the political situation made that possible, but sadly, by the time it was, he was too old and frail to do so. HM Revenue and Customs accepted that he was still domiciled in the old country.

Non-doms have enjoyed a comparatively benign system of taxation in the UK. Essentially, if resident in the UK, they are liable to UK income tax on their UK income, and to UK CGT on their UK capital gains, but if they have income or gains from sources outside the UK, they are only liable to UK tax on those if they "remit" the money to the UK.

"Remittance" has a wide meaning, and catches such things as using an offshore bank account to pay off debts incurred in the UK, but it is true that, because of the way the law is drafted, there were a number of tricks you could pull if you were a "non-dom". To take one example, if you had an offshore bank account paying interest, you closed the account on 4 April and moved the funds to a non-interest bearing account with another offshore bank, and then transferred the funds from that account to the UK on 6 April. Because UK income tax is charged on income for the year in which the "source" of that income exists, you were not liable to tax in the UK on the interest because the "source" (the interest paying account) did not exist in the same tax year as the "remittance" to the UK.

For a number of years, these and other "non-dom" tax planning techniques have been a source of irritation to HMRC. There have been numerous rumblings about reforming the taxation of non-doms, but they have all come to nothing because the net result would probably be to lose rather than gain tax revenue. The non-doms who escape significant amounts of UK tax by these ploys tend to be wealthy and internationally mobile people, who could simply pull out of the UK if they were taxed too heavily.

Goaded by pressure from the Tories, Gordon (sorry, of course I mean Alistair) has finally come up with a solution - legalised bribery. From April 2008, if a non-dom wants to enjoy the benefits of the remittance basis, and if he has been resident in the UK for the past seven years, he will have to pay an annual "tax charge" of £30,000 for the privilege. If he does not come up with this "bung", he will pay income tax and capital gains tax on his worldwide income and gains, just like a UK domiciled resident. It is not specified in the Press Release that this will have to be paid in used fivers, so I assume HMRC will take a cheque.

Of course, this will be bad news for the numerous non-doms who come here to earn a living, but it is a mere fleabite to the seriously wealthy. On 9 October, I watched an interview on TV with an investment banker who was resident here but not UK domiciled. She said that as long as the bribe was "reasonable" she thought it would not affect her plans. Told the suggested figure was £30,000, she appeared quite relieved, and said that was "quite acceptable".

If ever there were a case of one law for the rich and one for the poor, this is it. If Gordon has instructed Alistair to form the opinion that the "remittance" basis of taxation leads to anomalies and unfair results, then they should reform it by doing away with it, not by putting a cash price on it and turning it into a luxury item that can be purchased by the seriously rich.

The Press Release also speaks of a "greater contribution" to be extracted from those non-doms who have been UK resident for more than ten years. No doubt, in the classier UK nightspots, there will develop a form of one-upmanship among the non-doms - "Oh, you're still on the £30K sweetener, are you? I moved up to the platinum bribe last year".

Is your journey really necessary? Employees' travel and subsistence

By James Bailey

In last December's Tax Insider, we looked at travel and subsistence expenses for the self-employed, and this article completes the picture by dealing with the same topic where employees (including company directors) are concerned.

The rules are much more complicated than those for the self-employed, and in order to understand them we need to learn a new language:

"Ordinary Commuting" - this means travelling to your **"Permanent Workplace"** whether from home or from anywhere else that is not connected with your job, and you cannot claim the cost as an expense.

"Permanent Workplace" - this is a place you attend "regularly" to work, and not a **“Temporary Workplace"** you attend for a **"temporary purpose"**, or for a period of **"limited duration"**.

"Limited Duration" - means less than two years.

"Temporary Purpose" - means you do not spend 40% or more of your working time there - so if you are sent to work somewhere different for two days a week out of your five day week, then unless you are there for less than two years, that will become another **"Permanent Workplace"**

If you have to travel to a **"temporary workplace"**, you can claim the cost of the journey, whether you started from home, or from your "permanent workplace", or indeed from anywhere else.

Confused? Shame on you - these are the "simple" and "fair" rules for whether travelling expenses are allowable as an expense of your work.

In any case, we haven't even started on the complicated bits yet:

"Fixed Term Appointments" If your job has a fixed term, or is expected to have a fixed term, then the place you work will be your **"Permanent Workplace"** even if the fixed term appointment is for less than two years.

"Substantially Ordinary Commuting". You cannot turn an **"ordinary commuting"** journey into travel to a **"temporary workplace"** just by finding a work related task to do on the way. For example, I live near Tavistock in Devon, and my **"Permanent Workplace"** is in Truro, 60 miles away in Cornwall. We have a number of clients who live near the road I use for the journey, but just because I call in to see one of them on my way to work or my way home doesn't mean I can claim the cost of the journey. HMRC say they will normally accept that a 10 mile detour from the usual route (so 20 miles in total) means that this "substantial" rule will not apply to deny relief for the journey.

Subsistence

As a rule of thumb, if you are on a journey that qualifies as business travel (that is, it is not private travel or ordinary commuting), then the cost of subsistence (HMRC speak for meals, hotel bills, and so on) is also an allowable expense.

Some care is needed here - the expenses must be "necessary", so while the cost of a hotel room and food and drink are allowed, unnecessary expenses such as a newspaper, or having your laundry done are not. There is a round sum allowance that an employer can pay tax free (at the generous rate of £5 per night) to cover these "incidental" overnight expenses.

There are two myths about subsistence, which even tax inspectors have been known to perpetuate:

Drink - it does not matter (from a tax point of view!) whether the drinks you have are alcoholic or non-alcoholic.

Cost - the test is whether the subsistence is allowable according to the rules above. If it is, then the fact that it is more expensive than it need be is irrelevant - so a first class ticket is allowable if a second class one would have been, and just because you choose the most expensive items on the menu does not mean the expense is not allowable.

Once, while working for one of the "Big Four" firms, I was on the road for several days doing numerous presentations to clients about the latest Budget. At the end of the last day I was in a hotel a long way from home and feeling sorry for myself, and it just so happened the hotel was having a "Gourmet Dinner Night". I joined in enthusiastically, and a week later got a phone call from the firm's Expenses department, querying my claim for the hotel bill. I got on my high horse and started quoting them chapter and verse about an expense being allowable whether it was the cheapest option or not. It turned out that there had been a misunderstanding - the size of the bill for the Gourmet Dinner was such that they thought I must have had a guest (not allowable as an expense) at my table. Once I explained it was all my own work, there was no further problem!

Zero carbon, zero SDLT

By Sarah Bradford

Stamp duty land tax (SDLT) often accounts for a significant proportion of the cost of purchasing a property. It applies if the property costs £125,000 or more, bringing the majority of residential properties, particularly in the South and other high cost housing areas, into the SDLT net. The rate at which SDLT is payable depends on the price of the property. Properties between £125,000 and £250,000 attract a rate of 1%; those costing more than £250,000 and up to £500,000 attract a rate of 3%, whereas the rate applying to properties in excess of £500,000 is 4%.

This makes buying land and property a costly business. Stamp duty land tax on a £300,000 amounts to £9,000, whereas for a £600,000 property, the SDLT bill weights in at a hefty £24,000.

The high cost of SDLT mean that opportunities to purchase property without an associated SDLT charge are worth a look. From the Government's perspective, SDLT is a handy political tool which can be used to influence property purchasing decisions in accordance with wider political aims and it is a tool which has frequently been used to such effect. For example, temporarily removing stamp duty provides a boost to a sluggish property market, reducing SDLT in certain disadvantaged areas provides and incentive to buy in those areas, and so on.

Environmental concerns are high on the political agenda and the tax system is widely used to encourage `green' behaviour. SDLT is no exception and a new relief provides purchasers with an incentive to buy new energy-efficient properties. The relief, which applies to the first acquisition of a dwelling which is a zero-carbon home, aims to kick-start the market for zero-carbon homes, encourage micro generation technologies and to raise public awareness of the benefits of living in zero-carbon homes.

What is a zero-carbon home?

A home is defined as a zero-carbon home if it is energy efficient in relation to the heat loss parameter, dwelling Co2 emissions rate and net CO2 emissions. The criterion that must be met is shown in the table below.

Aspects of energy efficiency	Evidence
Heat loss parameter (HLP)	The HLP of the dwelling calculated in accordance with the approved methodology must be no more than 0.8 Watts per square metre Kelvin (W/m2K [*** NOTE TO EDITOR - 2 SHOULD BE A SUPERIOR 2 AS IN SQUARED METRES]
Dwelling CO2 emissions rate (DER)	The DER over the course of a year calculated in accordance with the approved methodology must be nor more than zero kilograms per square metre (kg/m2/year)
Net CO2 emissions	The net CO2 emissions from the dwelling over the course of a year calculated in accordance with the approved method-ology must be no more than zero kilograms per square metre (kg/m2/year)

The question as to whether these requirements are met is determined by an assessment of the dwelling by an accredited assessor.

Zero-carbon home certificate

A home that meets the criteria for a zero-carbon home will be awarded a zero-carbon home certificate by the accredited assessor. This certificate provides the evidence that the conditions have been met.

A zero-carbon home certificate will include the following information in relation to the dwelling:

- address, including postcode;
- that the dwelling is a zero-carbon home; and
- in relation to dwellings in England and Wales only, the unique identifying number from the energy performance certificate if an energy certificate has been produced.

The certificate must also include certain information in relation to the assessor issuing the certificate, including his or her full name, the name and address of the accredited assessor's employer, or, if the assessor is self-employed, his or her trading name and address and, in relation to dwellings in England and Wales only, the accreditation scheme, if any, to which the assessor belongs.

First acquisition

The SDLT relief only applies to the first acquisition of a zero-carbon home. Subsequent purchases of the property attract SDLT at the normal rates. Thus, the relief aims to increase the housing stock of zero-carbon homes as by restricting the relief to the first acquisition, energy-conscious purchasers are given an incentive to buy new.

For the purposes of the relief, the first acquisition is the simply the acquisition of a dwelling that has been constructed for use as a single dwelling and which has not previously been occupied.

The relief

The relief that is given depends on the purchase price of the property. Where the chargeable consideration is not more than £500,000 and does not include rent, no SDLT is payable on the first acquisition of a zero-carbon home where the acquisition is made on or after 1 October 2007 and before 1 October 2012. Likewise if the consideration includes rent and consideration other than rent and the consideration other than rent is not more than £500,000, no SDLT is payable.

However, if the chargeable consideration is £500,000 or more and does not include rent or the consideration other than rent is £500,000 or more and the acquisition is made within the same time frame, the amount of SDLT payable is reduced by £15,000.

This relief offers purchasers of zero-carbon homes the opportunity to benefit from considerable savings.

Example 1

Billy purchases a zero-carbon new zero-carbon home from a developer. He agrees a purchase price of £400,000 and the sale completes on 1 December 2007.

The property is awarded a zero-carbon home certificate by the accredited assessor.

The conditions for SDLT relief for zero-carbon homes are met. As the chargeable consideration is less than £500,000 the transaction is exempt from SDLT.

The purchase of a property not meeting the zero-carbon conditions for the same price would attract SDLT of £12,000. Thus by buying a new zero-carbon home Billy has saved SDLT of £12,000.

Billy subsequently sells the property for £550,000. The sale completes on 1 January 2012. However, the purchasers must pay SDLT at the normal rate as the relief is not available for subsequent purchases of a zero-carbon home.

Example 2

Wendy and Jack purchase a zero-carbon home for £1 million. The sale completes on 1 August 2009. The home is purchased new from a developer and has not been lived in previously.

The accredited assessor issues a zero-carbon home certificate in respect of the property.

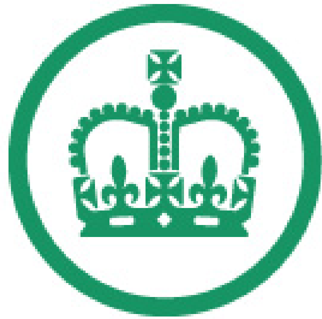
In the absence of the relief for zero-carbon homes (and assuming current rates of SDLT apply), Wendy and Jack would be liable for SDLT of £40,000 (4% of £1 million) in respect of the property. However, as they meet the conditions for SDLT relief in respect of zero-carbon homes, the actual SDLT payable is reduced by £15,000 to £25,000.

Conclusions

Those looking to buy a new energy efficient home could find that the SDLT relief for zero-carbon homes gives them the required incentive to forge ahead with the purchase. Although currently energy-efficient homes are more expensive to buy as developers seek to cover the additional building costs, they provide the purchaser with considerable energy cost savings as compared to traditional homes. The SDLT relief, which is available for a limited five-year period, may be enough to tempt potential house buyers to think green. At least, that is what the Government hopes.

HMRC Confirm Introduction of Revised Invoicing Requirements from 1 October 2007

By Andrew Needham



In Revenue & Customs Brief 51/07 and VAT Information Sheet 10/07, both issued in July 2007, HMRC announced that the changes to the rules on VAT invoicing will come into force on 1 October 2007 (they had originally intended to introduce them on 1 August 2007). The changes are intended to harmonise UK and EU law, and will affect the details suppliers must put on VAT invoices.

The new rules relate to the information that must be shown by suppliers in certain circumstances, and also the way in which all VAT invoices should be numbered. It is a current requirement that all VAT invoices are issued with an identifying reference number. However, when the new rules come into force on 1 October 2007, this reference number will also need to form part of a unique and sequential numbering system. Many VAT registered businesses already allocate numbers to their invoices in this way, so this aspect of the new rules will not have any real effect. Businesses which do not issue sequential invoice numbers, however, will have to update their systems in order to comply.

The new rules also mean that certain businesses will have to annotate their invoices to confirm the VAT treatment of the related supply. The types of businesses likely to be affected are:

- those using the VAT margin scheme for second-hand goods, works of art, antiques and collectors items;
- those involved in making travel related supplies that fall within the scope of the Tour Operators Margin Scheme;
- those involved in the intra EC supply of goods and services; and
- those making supplies where the customer accounts for the VAT

The VAT legislation sets out the details that need to be shown on a VAT invoice, and confirms that, to reclaim any VAT paid to a supplier, the claimant must be in possession of a valid VAT invoice. From 1 October 2007, invoices not complying with the new numbering rules will not qualify as VAT invoices.

The following are some of the example statements included in VAT Info Sheet 10/07 that HMRC say will be acceptable invoice narratives:

"This is a second-hand margin scheme supply" (margin scheme)
"This is a tour operators' margin scheme supply" (TOMS)
"This is an exempt supply" (intra-EU services)
"This supply is subject to the reverse charge" (intra-EU services)
"Zero rated intra-EC supply" (intra-EU goods)

Although HMRC has said that during the first year of the new rules, penalties for non compliance will only be issued in exceptional cases, we suggest it would be unwise for businesses to rely on this statement. VAT registered businesses should now ensure they meet the 1 October 2007 requirements.

VAT TIP

Moving To New Premises? Make Sure You Tell HMRC Beforehand!

IWhen we move premises, we remember to tell the telephone, gas and electricity about it. However, forgetting to tell HMRC could lead to a lot of unnecessary hassle.

Legally, a business is required to tell HMRC of a change of address within 30 days, so what can happen if it forgets or chooses not to do this? Here's what happened to one particular business we know of, which we'll call 'Lord Lucan Ltd' for the sake of anonymity.

Lord Lucan Ltd registered itself for VAT, and was quickly visited by a VAT Officer to check some of the registration details. After two months, it moved premises, and HMRC came out to see the business again, only to find it wasn't there. Not surprisingly, the VAT Officer quickly decided that he may be dealing with a bogus business; such is the high incidence of 'missing traders' in relation to 'carousel fraud'. He promptly deregistered the business on 'revenue protection' grounds.

It was more than a month before Lord Lucan Ltd found out what had happened, and even then it was only through one of its customers, who had contacted the business after checking its VAT number. Alas, Lord Lucan Ltd is still trying to sort the matter out and get its registration reinstated. It later transpired that the VAT Officer had compounded things with a mistake of his own. Lord Lucan Ltd had actually faxed the VAT Officer details of their new address a month before the move, and later confirmed it in writing too. However, he had taken no action.

Tip. If you change address, write to the VAT Registration Unit. Ring up after a couple of weeks to check they received your letter and are acting on it, or else you could find yourself in the same position as Lord Lucan Ltd!

The Tax Insider Gurus Answer Your Questions

Q.1 I have recently bought a property and an application for permission to build two bungalows at the rear has been lodged.The intention is to sell on when the development is complete.
What is the best way to minimise possible future CGT/Income Tax? Also is the following scenario feasible: the land is sold to other parties eg relatives/friends before any increase in value is obtained and this would probably not expose me to CGT? When the properties are built they become the principal residences of the owners and when sold do not attract CGT?

A.1 This will be a trading transaction and the profit will be liable to income tax, and to NIC. You should also register as a contractor under the Construction Industry Scheme - see HMRC's website for details. Space does not allow me to go into detail about possible tax planning, but the scenario you propose is unlikely to work, and if the idea is that the profits from the sales would find their way back to you from your relatives, it is perilously close to tax fraud!

Q.2 I have owned a flat for about 5 years which I have recently decided to sell. I bought a new flat on 10th July 2007 and then put the old flat on the market for sale. I moved into the new property on 5th September. However, I have not yet been able to find a buyer for the first flat and was wondering if I would be liable for CGT if I now sell the new flat instead and move back into the old one.

A.2 You should immediately write to your tax inspector nominating the new flat as your main residence with effect from 5 September. If you are married, your spouse (or civil partner) should sign the nomination too. When you move back into the old flat, you (and your spouse/civil partner if you have one) should write again to the inspector, varying the nomination to make the old flat your main residence. The gain on the new flat will then be wholly exempt from CGT provided you sell it before 10 July 2010.

Q.3 I have partial ownership of an inherited family house and we are looking to sell. The property is the only one I have ever owned, but I have not lived there for 5 years. I have rented around London since 2002. Officially, I have partially owned the house since 1992, yet I have never received any rent for it since i moved out. If the sale goes through, am I liable for CGT?

A.3 If you used the house as your residence at any time during your ownership of it, the period you were living there, together with the final three years of your ownership, will be exempt from CGT. The rest of the gain (which is time apportioned over the period of ownership) will be taxable. You should take advice about deferring the sale until after 5 April 2008, as it is likely that the changes to CGT announced on 9 October will mean less tax to pay if you sell in 2008/09

Q.4 i own a flat which i rent out. i have a large amount of registered cgt losses (from shares) which were jointly bought by my wife and myself, but are on my self-assessment returns over the last few years. i am a lower rate taxpayer, but my wife just gets a state pension. i want to transfer the flat into her name in order to save tax on the rental income. however, i want to then change to joint ownership before selling the flat late next year (after the new 18% flat rate comes in) so that we can take cgt losses into account. is this legal? is it advisable?

A.4 I do not understand why the CGT losses are only on your returns if the shares were jointly owned by both of you. Transferring the property to your wife is perfectly legal but is unlikely to save you much tax as your wife's State Pension (if it is a full one) will use up most of her personal allowance, so the saving might be as low as £200 for the year, which is probably less than the legal costs of the transfer. If there is a mortgage on the property, you need to take advice before the gift to make sure there will be no liability to Stamp Duty Land Tax on the gift. You should also take advice about the switch back to you before sale, as this might fall foul of the new CGT anti avoidance legislation in the 2007 Finance Act

Send your questions to: questions@taxinsider.co.uk for consideration in future editions.

Tax advice and help to solve your challenges at an affordable price!

The contributors to this e-zine are current practising specialists. They have made available an advice and helpline service to help resolve any UK and international tax matters.

Please visit www.taxinsider.co.uk for more information about this affordable service.

Contributors
Daniel Feingold BScHons, Barrister-at-Law (Non-Practising)
International Tax & Law Specialist
James Bailey MA (Cantab) CTA
Arthur Weller CTA
Andrew Needham BA ATII
Sarah Bradford

Publisher:
Tax Insider Publication
Tax Portal Ltd
PO Box 844
Warrington WA5 3ZT
Email: Enquiries@taxinsider.co.uk
Tel: 0870 041 9130

Tax Insider

Disclaimer: This 'Tax Insider' guide is produced for general guidance only, and professional advice should be sought before any decision is made. Individual circumstances can vary and therefore no responsibility can be accepted by the contributors or the publisher Tax Portal Ltd, for any action taken, or any decision made to refrain from action, by any readers of this guide. All rights reserved. No part of this guide may be reproduced or transmitted in any form or by any means. To the fullest extent permitted by law, the contributors and Tax Portal Ltd do not accept liability for any direct, indirect, special, consequential or other losses or damages of whatsoever kind arising from using this guide.