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Newsletter

Property disposals

Autumn Budget 2021 reset the capital gains tax (CGT) clock for payments on disposals of UK land and property.

Until the Budget, UK residents disposing of UK residential property had a 30-day window after completion to report gains and pay any tax due. Non-residents disposing of UK property faced a similar deadline, with a need to report whether or not tax is due.

The 30-day regime was itself relatively new, and has had considerable teething problems. Over £1.3 million was charged in penalties for late-filed returns in 2020, something attributed, at least partly, to low public awareness of the new rules. Concerns over lack of time to prepare accurate figures, especially in complex cases, were raised by professional bodies.

But the Budget extended the deadline to 60 days from completion for disposals completed on or after 27 October 2021. Where property has mixed-use, the 60-day window applies just to the residential element. For UK residents, the 60-day reporting requirement only comes into play where there is CGT to pay: and CGT on property disposal doesn't arise in every case. Where a property is always occupied as the only or main residence, principal private residence relief means CGT is unlikely to come into play. Disposals of second homes, disposals by landlords or divorcing couples are more likely to be affected.

We are on hand to advise if this is an area of concern to you.

Why timing matters for your capital spend

Getting the maximum tax benefit from capital spending often involves a balance of considerations, and timing can be critical to the outcome. We look here at two timing issues that could impact your business.

Last chance opportunity to use Covid-19 extended loss carry back rules.

Strategically timed capital expenditure now, in tandem with the extended loss carry back rules, may have the potential to create or enhance a trading loss, generating a tax refund for your business. Current rules provide particular incentives for capital spending. The temporary higher level of Annual Investment Allowance (AIA) is available both to companies and unincorporated businesses, whilst the 130% super-deduction and 50% special rate allowance are available to companies.

The extended loss carry back rules apply to trading losses made by companies in accounting periods ending between 1 April 2020 and 31 March 2022. For unincorporated businesses, it's available for trading losses made in the tax years 2020/21 and 2021/22.

If you are planning capital expenditure, please don't hesitate to contact us to discuss the options on timescale. We can help you decide if it would benefit your business to accelerate capital spending to bring it inside the relevant extended loss carry back window.

Reprieve for the temporary higher AIA limit.

The AIA limit increased to £1 million from January 2019, and was scheduled to drop back to £200,000 from 1 January 2022. Autumn Budget 2021, however, extended it one last time. The £1 million AIA annual limit is now set to remain in place until 31 March 2023. In terms of timescale, this sets it on a par with the super-deduction regime available to companies: the two now both finish at the same time.

Extending the availability period certainly gives businesses more time to take advantage of the enhanced provisions. But if planning major capital expenditure, it's worth taking stock now of when the expenditure would be best made. The accounting year end is a key component in any decision here.

We recommend an early discussion to make sure that the timing of your purchase allows you to maximise the tax benefits available. Complex transitional calculations will be needed when the super-deduction comes to an end, and when the AIA drops back to its original level. It will be important to factor these into your planning. We should be pleased to advise further here.

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Busting the research and development myth

Research and development (R&D). It's what other people do. Right?

The answer is, not necessarily. Many companies carry out R&D without realising that their activity could bring them within scope of the R&D tax regime. It matters because R&D tax relief is particularly generous.

There are two main R&D tax reliefs: Small and Medium-sized Enterprise (SME) R&D relief, and Research and Development Expenditure Credit. The first can provide an enhanced 130% deduction against taxable profits for qualifying R&D expenditure, in addition to the expenditure involved, making a total deduction of 230%. The second is potentially available to larger companies, and SMEs in particular circumstances. It allows a company to claim a credit calculated at 13% of qualifying R&D spend.

In the latest news, qualifying R&D expenditure changes to include specific data and cloud costs from April 2023: licence payments for datasets, and cloud computing costs attributable to computation, data processing and software.

There are also measures 'refocusing' the reliefs on innovation in the UK, and thus restricting some costs for R&D activity carried out overseas.

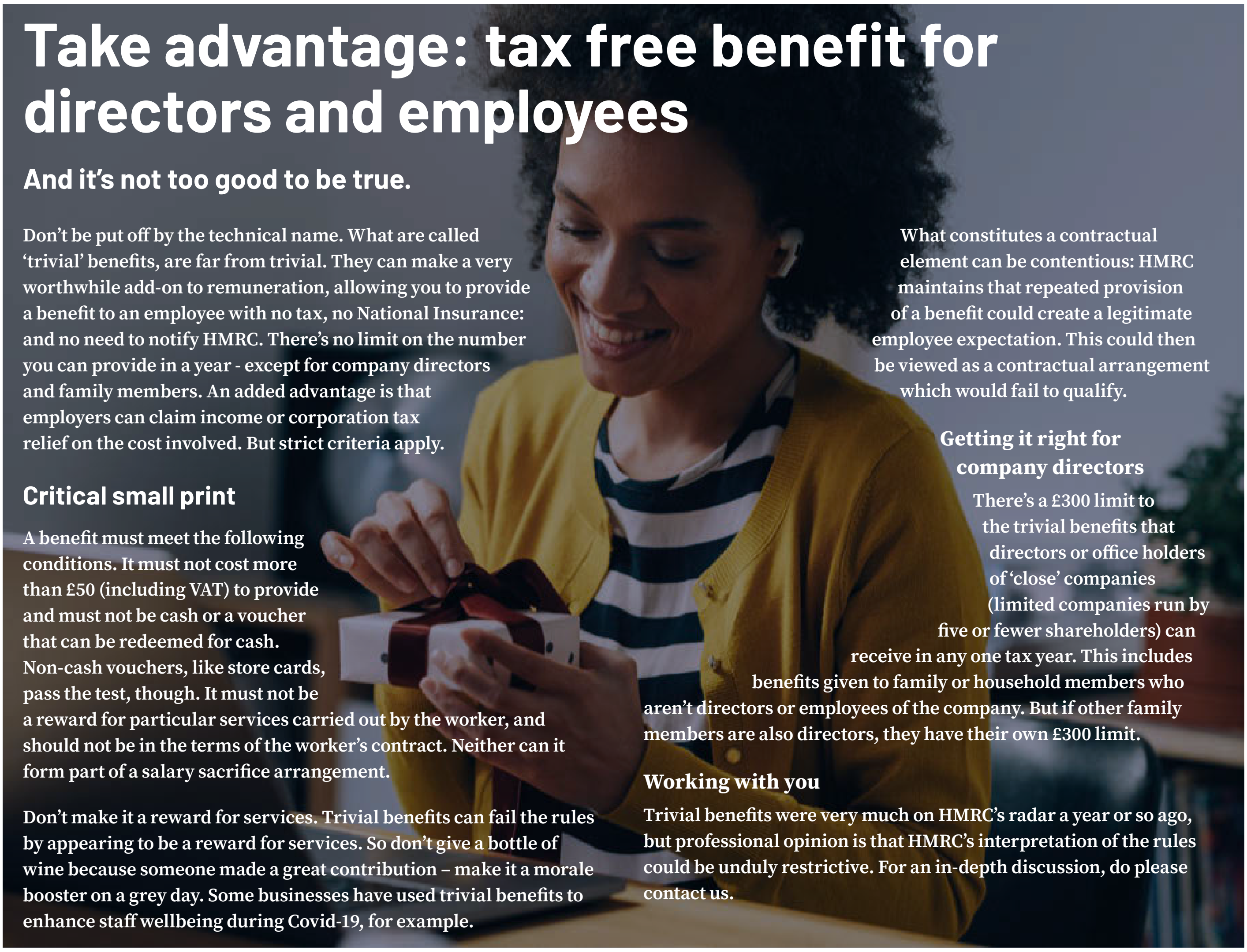
What are the boxes to tick to qualify for relief? Not all activity described as R&D in commercial parlance counts as R&D for tax relief purposes. For tax relief, the activity must fall to be accounted for as R&D under generally accepted accounting practice, and must also conform to definitions set out in BEIS Guidelines. Qualifying projects are those aiming to make an 'advance in science or technology' through the 'resolution of scientific or technological uncertainty'.

It goes without saying that subtle technical distinctions apply. An uncertainty that could be readily resolved by a competent professional in that field, for example, does not count. And an advance in science or technology must be one that has a bearing on the overall capability in a particular field, not one that relates solely to the individual company's own knowledge or capability.

Having a clear idea of where your company sits with regard to R&D activity also matters for another reason. There is increasing government concern about error and fraud in R&D claims. One way such error can arise, for example, is through the use of unregulated, so-called R&D 'specialist' firms. Many of these operate by obtaining tax refunds for R&D claims that turn out not to be robust enough to withstand subsequent HMRC checks.

Legislation is being laid to improve R&D compliance, with various changes to the claims process anticipated. From April 2023, claims will be made digitally in most cases, with additional detail given. A named senior officer of the company will have to endorse claims, and where an agent has advised on the claim, their details will also be needed. With increased HMRC compliance activity on the horizon, it is more important than ever that claims are watertight.

If, perhaps, you have not previously considered whether your company is involved in qualifying R&D, we should be pleased to explore the issue with you. Please do contact us for more information on this, or any other area relating to R&D.



Take advantage: tax free benefit for directors and employees

And it's not too good to be true.

Don't be put off by the technical name. What are called 'trivial' benefits, are far from trivial. They can make a very worthwhile add-on to remuneration, allowing you to provide a benefit to an employee with no tax, no National Insurance: and no need to notify HMRC. There's no limit on the number you can provide in a year - except for company directors and family members. An added advantage is that employers can claim income or corporation tax relief on the cost involved. But strict criteria apply.

Critical small print

A benefit must meet the following conditions. It must not cost more than £50 (including VAT) to provide and must not be cash or a voucher that can be redeemed for cash. Non-cash vouchers, like store cards, pass the test, though. It must not be a reward for particular services carried out by the worker, and should not be in the terms of the worker's contract. Neither can it form part of a salary sacrifice arrangement.

Don't make it a reward for services. Trivial benefits can fail the rules by appearing to be a reward for services. So don't give a bottle of wine because someone made a great contribution – make it a morale booster on a grey day. Some businesses have used trivial benefits to enhance staff wellbeing during Covid-19, for example.

What constitutes a contractual element can be contentious: HMRC maintains that repeated provision of a benefit could create a legitimate employee expectation. This could then be viewed as a contractual arrangement which would fail to qualify.

Getting it right for company directors

There's a £300 limit to the trivial benefits that directors or office holders of 'close' companies (limited companies run by five or fewer shareholders) can receive in any one tax year. This includes benefits given to family or household members who aren't directors or employees of the company. But if other family members are also directors, they have their own £300 limit.

Working with you

Trivial benefits were very much on HMRC's radar a year or so ago, but professional opinion is that HMRC's interpretation of the rules could be unduly restrictive. For an in-depth discussion, do please contact us.

Your pension and you

Our round up of pensions news highlights a number of changes.

Normal minimum pension age: what's changing?

Normal minimum pension age (NMPA) is currently 55, and it's usually the earliest age at which pension savers can access a workplace or personal pension without incurring an unauthorised payments tax charge. There are certain specific circumstances in which this may vary, for example where someone is retiring because of ill health, or in a minority of cases, where someone has what's called a protected pension age. Withdrawing funds from a pension before NMPA is normally classified as an unauthorised payment. This is liable to a tax charge, potentially up to 55% of the value withdrawn.

The NMPA will rise to 57 from 6 April 2028, as the government looks to accommodate increased life expectancy and longer working lives. The change broadly coincides with the rise in state pension age to 67. It is anticipated that the NMPA will continue to be about ten years less than state pension age in future.

There are, however, safeguards for members of registered pension schemes, who before 4 November 2021 had a right to take their entitlement to benefit at or before the existing NMPA. The new NMPA does not apply to some uniformed public servants, such as firefighters.

Once someone reaches the NMPA, there are a range of options on how to access pensions savings. For defined contribution schemes, now the predominant type of scheme used for workplace pensions, options include taking a tax free lump sum of 25% of fund value, and then buying an annuity with the remaining fund, or using income drawdown. Annuities, or monies received from an income drawdown fund, are taxable income in the year of receipt.

Scheme Pays

In an area of interest to some higher earners, there are forthcoming adjustments to the 'Scheme Pays' rules. Scheme Pays may be relevant where annual savings into a pension go over the annual allowance (AA).

The AA limits how much tax relieved pension saving it's possible to make in a tax year, and is usually £40,000. It may, however, be subject to a taper for higher earners, and we should be pleased to advise further. Where pension provision exceeds the AA, an AA tax charge applies.

But with Scheme Pays, there may be the option to have the pension scheme meet some or all of the AA tax charge out of the pension pot. From 6 April 2022, there is change to the time limits and procedures when a request is made for the scheme to pay in relation to an earlier tax year. The measure has retrospective effect from 6 April 2016.

Outlook wintry?

In other headlines, the lifetime allowance (LTA) has been frozen at £1,073,100 until April 2026, and the triple lock on the state pension put on ice for 2022/23.

The LTA is the maximum figure for tax-relieved savings in a pension fund. Where the value of the scheme is more than this when benefits are drawn, a tax charge can occur. This is 55% of the excess, if taken as a lump sum, and 25%, if taken as a pension. With recent HMRC figures showing tax yield from LTA charges increasing significantly, freezing the LTA will bring more people within scope of the charge.

To make tax efficient decisions as regards any additional investment, it's important to know if savings will exceed the LTA. If so, alternative investment routes, such as Individual Savings Accounts (ISAs), or tax advantaged schemes like the Enterprise Investment Scheme, may be preferable.

Working with you

To discuss the best way to plan for retirement, and the tax consequences of any decision, please contact us.

Drilling down: Mr Tooth and the tax return

A complex Supreme Court case in 2021 ended in taxpayer victory - and two takeaway messages.

1. Importance of full disclosure to HMRC. Unable to get software to enter key information in the right box on the right page of his self assessment tax return, Mr Tooth and his advisers decided to crack the system. Using an 'obviously artificial' tax reference number, 99999 99999, they put it on the partnership page of the return, instead. Detailed disclosure was then made in the white space on the return.

HMRC maintained that the return was deliberately inaccurate. Deliberate inaccuracy is the green light for HMRC to assess any loss of tax for up to 20 years after the end of the tax year concerned: it also opens the door to higher penalties. The Court, however, held that Mr Tooth had no deliberate intention to mislead, but had done his best 'in the context of an intractable online form'.

2. HMRC bite. The Court upheld HMRC in the important area of discovery assessments. These can be used where HMRC believes the wrong amount of tax has been assessed. The Tooth case makes it easier for HMRC to access extended time limits, even where it has delayed using available information, to raise additional tax bills, subject to the normal statutory time limits and principles of public law.

Ouch.

Gift Aid: 5 own goals to avoid

There's no doubt that Gift Aid is good for charities. Latest statistics reveal that the average Gift Aid donor gives £360, though Northern Ireland tops the list, with an average gift of £750. But it's also an area where close attention to the rules matters.

It's a message underlined by a High Court case in 2020, involving a charitable gift of £800,000. Taxpayer, Mr Webster, inadvertently entered the gift as £400,000 on his tax return, although he had in fact increased the donation to £800,000. The aim was to use special Gift Aid carry back rules (below) as he hadn't enough tax in charge to cover the donation in the current tax year. But because of a variety of errors, the verdict went against him. And that resulted in a £215,000 tax bill.

1 Own goal one. Not enough tax in the tax year in which a donation is made

Gift Aid allows a charity to claim back the basic rate tax (currently 20%) that you have paid on your donation, so your chosen charity ends up with a bigger gift.

Always check you will pay enough tax in the tax year you make the donation. You must pay enough tax – income tax or capital gains tax - to cover the amount reclaimed by the charity. As a rule of thumb, donations should qualify if they're not more than four times what you have paid in tax during the tax year.

As happened in Mr Webster's case, it's the taxpayer who would be asked to make up any shortfall, not the charity. If in doubt, contact the charity to cancel the Gift Aid declaration for future donations.

2 Own goal two. Mind the gap: Scottish tax rates are different

Different rates of tax apply in Scotland, but the basic Gift Aid principles are the same. Scottish taxpayers paying at 19% should check that enough tax has been paid to cover their Gift Aid claim.

3 Own goal three. Unclaimed additional tax relief

If you pay tax at more than basic rate, you can reclaim the difference between this and basic rate on the donation. However, research suggests many people don't claim the additional tax relief to which they're entitled.

Higher rates of tax relief would normally be claimed on the self assessment tax return, or by asking HMRC to amend a PAYE tax code.

4 Own goal four. Lost paperwork

Don't throw away the paperwork. It's important to keep records of all Gift Aid donations in order to substantiate claims for higher rates of relief.

5 Own goal five. Mistakes with the small print

Higher rate tax relief is usually given in the tax year in which you make the donation. So a Gift Aid payment made by 5 April 2022 would get tax relief against income of 2021/22. This in itself can be a useful tax planning tool.

But it may be possible to elect to have a Gift Aid donation treated as if made in the previous tax year. This can be a plus if you want to speed up tax relief, or paid higher rates of tax in the previous year. To carry back a donation made between 6 April 2022 and 31 January 2023 against 2021/22 income, strict timing rules apply. The election would be made on the 2021/22 tax return, for which the final filing deadline is 31 January 2023.

Carry back elections are best made on the self assessment tax return. Correct procedure is essential, as Mr Webster found to his cost. Once the tax return is filed, the window to make a carry back election closes. The election can't be made on an amended return: something HMRC has recently been writing to taxpayers about. Neither can an election, once made, be amended. A further point is that carry back elections can't be used for part of a gift: they must be used for the whole sum.

For a discussion of charitable giving and the implications for tax, please contact us.

HMRC sets sights on cryptoassets

For proof that cryptoassets are high profile, see Collins Dictionary's 2021 word of the year. It's NFT - non-fungible token.

NFTs are the crypto-world equivalent of certificates proving you own a digital (or physical) asset: a collectible, like digital artwork, or digital sports cards.

Collins Dictionary isn't alone in registering public interest in cryptoassets. So, too, is HMRC, and it's been writing to taxpayers it believes hold cryptoassets to point out potential tax liability.

Disposing of cryptoassets, such as cryptocurrencies like bitcoin, brings a potential charge to capital gains tax (CGT). Disposals include the sale of assets for fiat currency, like pounds or dollars: the exchange of one cryptoasset for another, such as bitcoin to ether: or the use of cryptoassets to buy goods or services. The annual CGT exemption can be used to cover such gains, up to £12,300. If gains exceed this, or chargeable assets worth more than £49,200 (in 2020/21) are disposed of, HMRC should be notified, usually via the self assessment tax return.

The tax position is not always intuitive. Where, for instance, different types of cryptoasset are exchanged, there can be a chargeable taxable gain, even if the assets aren't converted back to fiat currency. We are happy to advise on cryptoasset transactions to help establish if a tax liability has arisen.