

FEBRUARY '11 TAX NEWSLETTER

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Welcome to our monthly tax newsletter designed to keep you informed of the latest tax issues.

We hope you enjoy reading the newsletter and remember, we are here to help you so please contact us if you need further information on any of the topics covered.

BUSINESS RECORDS CHECKS

HMRC have just announced a consultation on their planned programme of checks of business records within the small and medium enterprise (SME) sector.

They attempt to justify the introduction of this programme by claiming that research by the OECD suggests (to HMRC that is) that poor business record keeping is responsible for a loss of tax in up to 2 million SME cases annually.

The consultation exercise is limited to consideration of the best way to implement the programme – not whether it is a good idea in the first place.

This is an ideal time, therefore, for your record keeping to be reviewed by us to ensure that it will withstand any new attack from HMRC under this programme.

NEED TO BUY AN ANNUITY FROM YOUR PENSION FUND?

The new rules applying from 6 April are now known, with flexibility being the name of the game.

Annuity rates are very low at present, with no signs of that changing, and the new rules will allow you to draw income from your pension fund without having to buy an annuity. If you have a secured pension income of at least £20,000 a year you will even be able to access 100% of your pension fund if you wish (with an income tax charge on it of course) and the options in your particular circumstances need to be reviewed.

REDUCING YOUR CAPITAL GAINS TAX BILL

If you are expecting to pay CGT at the new rate of 28% on all or part of a capital gain on a sale in the current tax year, there may be scope to reduce the rate. This involves making a contribution to your pension scheme or a donation to a charity.

It works by reducing your taxable income for all purposes – including the rule that says your rate of CGT is found by adding the gain to your taxable income. If the latter does not exceed the basic rate band of £37,400 it means that some or all of the gain is taxed at 18% instead of 28%.

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FURNISHED HOLIDAY LETS

We mentioned the new restrictions in the September 2010 edition of Tax E-News, and now it has been decided to delay most of them until 6 April 2012 instead of introducing them from 6 April 2011.

Specifically, the advantageous tax regime is only likely to apply from 6 April 2012 if the property in the EEA is available to let for at least 210 days (30 weeks) in the tax year and is actually let for at least 105 days (15 weeks). The latter requirement may well be fine for a property in France, Spain or Portugal, but you could struggle to let a property in the UK for that number of weeks given the vagaries of our climate.

A concession may help if you own more than one holiday lettings property. Then, if the 210 days availability test is not met for each property there is an averaging election which can be made between the properties (but keeping UK properties separate from EEA properties)

Another concession is where the 105 day condition is met from 2012/13 for a specific tax year, in which case an election can be made to treat the property as continuing to qualify for the next 2 years - but not if the averaging election above is in place.

Where the timing has not changed is where you are unfortunate enough to make a loss on the lettings. From 6 April 2011 (not 2012) the loss cannot be set against your other income and instead it has to be carried forward to set against future profits - or profits from other property lettings in some cases.

We will always be mindful of the possibility that even if your lettings pattern falls short of the above new rules, we may be able to argue that given the level and extent of the services you provide to the holidaymakers, the lettings are a trade in the normal meaning of that magical word. Then, the advantageous tax regime will still apply whatever the number of days that the property is let.

USING THE CGT ANNUAL EXEMPTION

This has always been worth considering towards the end of a tax year, but the potential tax savings are now substantial and careful planning can be highly effective.

Specifically, for a married couple or civil partnership it is worth up to £5,656 each tax year. The exemption is $£10,100 \times 2 = £20,200$ at a rate of 28% = £5,656.

If the exemption will not ordinarily be used by each spouse or partner, it is worth looking at creating disposals by 5 April 2011 subject of course to the costs involved. The asset sold can, if desired, be repurchased although there are special restrictions for quoted investments (even they can be avoided if the other party makes the repurchase).

Assets can be transferred between a married couple or civil partners without any CGT arising, and in that way the gains can be made by the right person so as to utilise 2 sets of the annual exemption.

