


SEPTEMBER '11 TAX NEWSLETTER

GardnerSteward 
CHARTERED ACCOUNTANTS
Charwell House
Wilsom Road
Alton
Hampshire
GU34 2PP

www.gardnersteward.co.uk

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.

WELCOME

Unusually, for this edition of Tax E-News we are mainly concentrating on attractive tax saving opportunities which are planned for the future rather than having an immediate impact. We are doing this because these opportunities do need to be looked at now in view of the high level of tax breaks associated with them.

Before we do that, however, the first topic will have an immediate impact in the right circumstances.

AVOIDING PENALTIES

You may have suffered a penalty from HMRC due to late filing of a tax form, and no doubt you will have felt aggrieved but at the same time realised that ordinarily there is little or no scope to get the penalty reduced or withdrawn.

A brave taxpayer took on HMRC recently and won! It involved an employer who received a penalty notice of £400 for failure to file the employer annual returns by the due date, with the penalty being £100 per month for 4 months. Later on a further penalty notice for £100 was issued after the returns were properly filed, so overall the taxman wanted £500.

The company thought that it did not need to file the returns because its sole employee had left in the tax year.

They accepted that view was incorrect but complained that had HMRC been quicker to tell them of the error it would have been rectified far earlier with the result that the penalties would have been less. The Tax Tribunal decided that the penalty should be reduced to £100 and made the following criticisms of HMRC:

- ◆ The legislation does not provide that the penalty *must* be levied – rather that the person is liable to the penalty which means not that the specified penalty *must* apply, but *may* apply and may be demanded.
- ◆ Thus the employer was entitled to rely upon the common law duty of a public body to act fairly not just in its decision-making process but also in administering its statutory powers. The Tribunal said that it was in no doubt that a public body does not act fairly where it deliberately desists from sending a penalty notice, for 4 months or more, knowing that the effect will be to impose a minimum penalty of £500 upon somebody whose sin may be no more than oversight or forgetfulness.
- ◆ HMRC is an organ of the State. It is no function of the state to use the penalty system as a cash generating scheme.

That was a good read! We will make sure that the decision is used to fight a penalty whenever the circumstances fit.

REVIEW OF TAXATION OF PENSIONERS

This is often seen as overly complex, with many pensioners subject to PAYE before retirement but self-assessment afterwards when they may have several small sources of income that may or may not need tax deducted. A perennial problem indeed! It is not the amount of income that makes somebody's tax affairs complex – rather it is the number of different sources.

The Office of Tax Simplification (OTS) is to conduct a review of the system of pensioner taxation and make recommendations on how to simplify the tax system and ease tax administration.

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The OTS will provide an initial report by Budget 2012 that:

- ◆ Examines evidence and identifies the areas of the tax system that cause the most complexity and uncertainty for pensioners.
- ◆ Identifies how these issues vary within the pensioner population.
- ◆ Explores what changes could achieve simplification and what the wider implications of these might be.

JUNIOR ISAs

The recent volatility of the FTSE 100 might make people wary of investing in stocks and shares, but this new tax-efficient product does have plenty of long-term attractions in the right circumstances. Your IFA can advise fully, but as far as the tax rules are concerned there is complete income tax and capital gains tax exemption with the main features being:

- ◆ Starting on 1 November 2011, with an annual limit of £3,600.
- ◆ Available for under-18s who were born on or after 3/1/11 or before 1/9/02. This covers all those not eligible to have a Child Trust Fund.
- ◆ Estimated 6 million initially eligible, with 800,000 new children per year after that.
- ◆ After 5/4/13 the £3,600 annual limit will be uprated in line with the CPI.
- ◆ The funds are held until the child reaches the age of 18 when it will automatically become an adult ISA. The child can manage the account from the age of 16.
- ◆ Grandparents could find this a useful way of helping their grandchildren and saving IHT at the same time, with the annual investment coming within the annual IHT exemption of £3,000 and/or normal expenditure out of income.



GIFTS OF PRE-EMINENT OBJECTS AND WORKS OF ART TO THE NATION

The aim of this new scheme is to stimulate lifetime giving by encouraging taxpayers to donate pre-eminent objects, or collections of objects, to the nation. In return, donors will receive a reduction in their income tax liability based on a set percentage of the value of the object they are donating. It is therefore of a specialised nature, but such is the scope for tax reductions that we are mentioning it here and are ready to advise fully as soon as the exact rules are known.

The new scheme will share some elements with the existing IHT Acceptance in Lieu (AIL) scheme, which will continue to operate in parallel with this new scheme. The likelihood is that the existing AIL panel of experts will form the basis of the expert panel that will assess gifts made to the nation under the new scheme. Both schemes will share the annual limit that has been available to date for the existing IHT AIL scheme (currently set at £20m per year, so not a worry for most people!).

At present the scheme is up for consultation, but with the proviso that some aspects will not change, such that the new scheme will apply to items that are donated to the nation and will operate within an annual limit. The tax reductions offered under the new scheme will be equal to a set percentage of the value of the object being donated. It will only apply to pre-existing objects and will not cater for, for example, commissioning the creation of new objects. Finally, the new scheme will be limited to chattels (moveable objects), given that donors may already claim income tax relief or corporation tax relief on gifts to charities of land and buildings.