A G Kelly Ltd – Chartered Certified Accountants

Client Bulletin

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CAPITAL GAINS TAX AND SECOND HOMES

One of the complaints recently made against Members of Parliament (and even Government Ministers) was they claimed that one house or flat was their 'main residence' for tax purposes (and so exempt from capital gains tax), even though another property was in fact clearly their principal home. However, this was not a case of there being one rule for the legislators and another for everybody else: in principle, anyone who owns two (or more) properties is entitled to choose which is to be treated as his or her 'main residence' for tax purposes.

This choice is subject to three restrictions. First, husband and wife (or civil partners) may have only one 'main residence' between them. This is blatantly discriminatory, as in the case of an unmarried couple, one partner could (say) own a London flat and treat that as his 'main residence' and the other own a weekend cottage and treat that as her 'main residence' for tax purposes.

Second, the 'main residence' must be available for occupation and not (for example) let to a tenant. Third, there is a time limit of two years for notifying HM Revenue & Customs that a choice has been made. The two years runs from the time the second property is acquired or a couple, each of whom owned their own home, are married or register a civil partnership. (A new two year period will also begin in the relatively unusual circumstance of a third or subsequent property being acquired, or of one of three or more properties being sold.)

Which house should you choose?

As a starting point, because the 'main residence' will be free of tax when sold, it will usually be best to nominate either the house you are most likely to sell, or the one which is likely to be sold first, or the one on which the biggest gain is expected. However, in practice, the decision may be more difficult, partly because the legislation is complex and extends relief, for example, to some properties which were once, but are no longer, the individual's 'main residence'.

By the way, there is no requirement for the nominated 'main residence' to be in the United Kingdom – it could, for example, be a cottage in France (though there might be problems showing that it was a residence at all, let alone a main residence, if it was regularly let out to holidaymakers).

If no choice has been made and notified to HMRC, the exemption will be given for the property which is in fact the individual's (or the couple's) main home. However, even if 'Green Gables' is clearly the individual's main home and he wants it to be treated as such for tax purposes, he should still make a formal choice and notify HMRC. This is because, whilst there is a two-year time limit for making the choice, that choice, once made, can at any time thereafter be changed, if desired with up to two years' retrospective effect. Accordingly, formally nominating one property as your main residence keeps the option open to change to the other, should something unexpected occur.

Because the legislation is very complex, and because substantial amounts of tax can be at stake, we would recommend clients to keep us informed of their property acquisitions and disposals and to discuss the position with ourselves before making or changing a 'main residence' election. Finally, if you already have two properties, which you have owned for more than two years, but have not yet made a nomination, it may still be possible to retrieve the position, at least for the future – please contact us for individual advice on this point.

EMPLOYEE SUBSISTENCE PAYMENTS

HMRC have published a table of day subsistence rates which they will allow to be paid tax and NIC-free, provided the employer has a PAYE Dispensation Agreement. Hitherto employers have had to negotiate allowable rates individually – and it will still be open to individual employers to seek approval for higher rates if they believe they are justified.

Subsistence allowances may only be paid tax-free where the employee is working away from base – for example, he is sent to work on a customer's premises or is required to attend a training course. Additionally, the Revenue guidance says that tax-free payments may only be made where the employee actually incurs expenditure on meals and not where he takes a packed lunch prepared at home – but they stop short of requiring the employee to produce a receipt.

Subject to that, under HMRC's new table, a 'one meal' payment of up to £5 may be made where the employee has been away from both his home and his usual place of work for at least five hours. For an absence of at least ten hours, a 'two meal' payment of up to £10 may be made.

Additionally, a 'breakfast' payment of up to £5 may be made where the employee leaves home before 6 am *and does not usually set off for work so early*. Also, a 'late evening meal' payment of up to £15 may be paid if the employee finishes work after 8 pm *and does not usually work so late*. Note that, like the 'one meal' and 'two meal' payments, these allowances may only be paid tax-free if the employee is travelling on business and not where he begins work exceptionally early, or finishes work exceptionally late, at the place where he is usually employed.

The maximum payment for one (very long) day would be £30 (over ten hours, plus breakfast, plus late evening meal).

There are no published rates for overnight subsistence – employers can either reimburse against receipts or agree individual scale rates with HMRC.

Finally, the new table of day subsistence rates does not override the 'working rule agreements' for the construction industry and allied trades.

SUBCONTRACTORS IN THE CONSTRUCTION INDUSTRY

For the last forty years, there has been a running battle between the Revenue and the construction industry over the 'employment status' of tradesmen working in the sector. By and large, the industry has wanted its tradesmen to work as self-employed subcontractors, while the Revenue has wanted to 'recategorise' everyone as employees. What is at stake, of course, are the tax allowances for expenses which can be claimed by self-employed people, and the higher National Insurance contributions payable by employees – not to mention the contributions payable by their employers.

Every few years the Revenue has brought forward new legislation in an attempt to tighten the rules, but overall they have had relatively little success in increasing the number of construction industry workers classified as employees. If the workforce of one firm was reclassified as employees, individuals tended to drift away to other contractors, who would accept them as self-employed and the game began all over again. Employment status disputes were not often litigated, owing to the costs involved, but when one was, it was not unusual for the Tribunal or Court to uphold the tradesmen's self-employed status.

After many setbacks, the Revenue will try a new tactic

However, the Revenue, supported by the Government, is unwilling to admit defeat and last month (July) announced a totally new approach to the taxation of tradesmen working in the construction industry. The question of employment status – whether an individual is self-employed or employed – will simply be ignored. Instead, everyone working in the industry will be taxed (and pay National Insurance contributions) as if he was an employee ***unless either***:

- He provides not only his own labour but also substantial equipment – for example, a JCB owner-operator. Provision of ordinary hand tools would not be sufficient; ***or***
- He provides all the materials necessary to do the work – for example, under a 'supply and fix' contract; ***or***
- He provides the services of other workers (for example, a team of bricklayers) rather than just his own labour.

The Government's intention is that an individual tradesman should not be able to circumvent the new rules by working through a one-man company, 'umbrella' company or similar organisation. PAYE will still bite, at latest at the point where the earnings are paid out to the individual.

However, the new scheme will apply only to payments within the construction industry – by developers and contractors to subcontractors. It will not apply where a tradesman works direct for a householder or a non-construction industry business.

The detail of the new scheme is subject to consultation and the implementation date has not yet been fixed – 6 April 2010 would seem the earliest possible date, with 6 April 2011 perhaps more likely (to minimise the effect on costing for existing contracts). A further announcement is likely as part of this Autumn's Pre-Budget Report.

FINANCE ACT 2009

The recently-enacted *Finance Act 2009* includes some important amendments to the capital allowances code for equipment and vehicles.

First, there is a 40% first-year allowance for purchases made in 2009/10 (the year 1 April 2009 to 31 March 2010 for companies and the 2009/10 tax year for unincorporated businesses). This sits on top of the £50,000 Annual Investment Allowance, so if a trader spent a total of £120,000 on new machinery in his accounting year to 31 March or 5 April 2010, he would be entitled to claim:

Annual Investment Allowance – 100% × £50,000	£ 50,000
First-Year Allowance – 40% × £70,000	£ 28,000
Total allowances for the year	£ 78,000

Not all machines and vehicles qualify – the main exceptions being motor cars and some fixtures in buildings.

An important planning point is that the Annual Investment Allowance (AIA) is an allowance for the trader's accounting year. Accordingly, it may be possible to claim an immediate write-off for expenditure of up to £100,000 if it is spread over two accounting years. And some environmentally-beneficial equipment qualifies for 100% First-Year Allowances over and above the AIA – examples include energy-efficient lighting systems and refrigerated display cabinets and water-saving taps.

Because of the complex rules governing the expenditure qualifying for various allowances, and the tax advantages which can be gained by timing the expenditure correctly, we would strongly advise any clients considering a major capital investment to discuss their plans with ourselves before entering into firm commitments.

Capital allowances on motor cars

The new Finance Act also amends the capital allowance code for motor cars. In the past, there has been a special rule limiting the capital allowances that can be claimed on motor cars costing more than £12,000, to £3,000 a year (and also restricting tax relief for lease rental payments on such cars).

For cars purchased on or after 6 April 2009 (1 April 2009 for companies) this rule is replaced by one restricting capital allowances on cars with CO_2 emissions above 160 g/km to 10% a year (instead of the usual 20%). Lease rental payments on such cars will be subject to a flat-rate restriction of 15%. Importantly, these new restrictions will apply to taxis and hire cars, which were exempt from the old rules.

The Act also changes the status of motor cycles. In the past, they have been classed as ‘cars’, but when purchased on or after 6 April 2009 (1 April 2009 for companies) they will be taken out of the class and so qualify for the 100% Annual Investment Allowance and the new, temporary 40% First-Year Allowance.