

TAX NEWSLETTER SEPTEMBER 2016



Welcome to this month's eNews in which we take a closer look at rollover relief and how this can be used to defer tax on the sale of a business asset. We also consider a recent consultation document issued by HMRC on tax avoidance and in particular the potentially wide reaching definition of 'avoidance'. This has raised concerns among many taxpayers and professionals.

In our July eNews we looked at further developments in the Government's plans to 'Make Tax Digital'. This does seem to be gathering momentum and this month's article includes an update on current progress although please note that the Treasury Select Committee is pressing for a delay on implementation.

The Autumn Statement will be given on 23 November and it will be interesting to see what changes will be announced by the new Chancellor, Philip Hammond, which are likely to start paving the way for Brexit.

As usual, please do get in touch if you would like further guidance on any of the areas covered.

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DEFERRING TAX ON THE SALE OF BUSINESS ASSETS – ROLLOVER RELIEF

If you sell a business asset for a profit, the starting point is that you will pay capital gains tax (CGT) on the profit. However, if you then use the money from the sale to buy a new business asset, you could be missing out on a valuable relief which allows you to defer (or “rollover”) part or all of the tax payable.

This is particularly useful if you have reinvested all the proceeds from the sale into a new asset and do not then have the cash available to pay the tax.

To qualify for the relief, the proceeds must be invested in the new asset within 12 months before or 3 years after the disposal of the old asset. A claim for relief must then be made within 4 years of the end of the tax year of disposal or 4 years from the purchase of the new asset (whichever took place later). This means you could be entitled to relief on assets you disposed of almost 7 years ago!

Conditions

There are a number of conditions surrounding the relief and a few are included below. These can be complex, and you should therefore always seek help if you are unclear whether the relief is available.

- Both the old and new assets must be used for the purposes of a trade for full relief to be due. However, partial relief is still available if you have used the asset in your trade for part of the time you have owned it only, or if the asset is land or buildings, part of which only has been used in the trade.
- All of the proceeds received for the old asset must be reinvested for full relief however, again, partial relief may be due if only some of the proceeds are reinvested.
- Relief is only available on certain types of assets, largely land and buildings, goodwill and fixed plant and machinery. Qualifying plant and machinery should be fixed in one particular location but should not become part of the building itself. Moveable plant, which includes motor vehicles, does not qualify for relief.

Relief

This relief is often overlooked and claiming it could save you money, with it being possible to rollover gains a number of times before the tax payment is actually crystallised.

If you would like to discuss this further, please do get in touch.

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CRACKING DOWN ON TAX AVOIDANCE

The recent consultation document published by HMRC, titled ‘Strengthening Tax Avoidance Sanctions and Deterrents: A discussion document’ has given cause for concern for many professionals and taxpayers. The document sets out proposals to impose stronger sanctions on those who enable defeated tax avoidance as well as those who use it.

One major concern is that the wording of the proposed legislation could enable HMRC to argue that even ‘normal’ tax planning such as making pension contributions, or claiming tax reliefs will fall foul of the proposals. It is hoped that the proposals will be amended so that they only apply to large scale mass marketed arrangements, or arrangements where there is a significant amount of tax at stake, but for now the definitions are very wide-reaching and something to watch.

Finance Act 2016 defines defeated tax avoidance as “arrangements where there is a final determination of a tribunal or court that they do not achieve their purported tax advantage, or the taxpayer and HMRC come to an agreement that the arrangements do not work”. Given that a taxpayer is unlikely to agree that a scheme doesn’t work there is likely to be a significant increase in the number of arrangements being dealt with in court.

Another concern arises in relation to a taxpayer’s defence should HMRC challenge any avoidance scheme used. The only real defence for the taxpayer appears to be that they took ‘reasonable care’ and currently the burden of proof is on HMRC. The proposals suggest that the burden of proof should be moved to the taxpayer which seems

rather unfair given that many taxpayers already feel that they are at a disadvantage when dealing with HMRC. The burden of ensuring they are tax compliant is already suffered by the taxpayer in terms of time and cost and, for most taxpayers, hiring an adviser is what they consider to be taking 'reasonable care'.

Other concerns include the wide-reaching definition of who is deemed to be an 'enabler' (which could have huge consequences for many professionals falling within the definition) as well as the possibility of the rules applying retrospectively to schemes that may have been put in place a long time ago.

The closing date for comments on this consultation is 12 October 2016 and a response document will be published later this year with any legislative changes to be taken forward as part of a future Finance Bill; something many professionals will be keeping an eye on. We will keep you updated on any further developments.

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HMRC OUTLINE MAKING TAX DIGITAL PLANS

HMRC have issued a series of consultation documents outlining further plans for the government's Making Tax Digital (MTD) initiative.

HMRC have published six consultation documents on MTD. The six consultations set out detailed plans on how HMRC propose to make tax digital and to simplify the tax system. The consultations look at the following areas:

- How digital record keeping and regular updates will operate - this considers compulsory digital record-keeping and quarterly 'updates' to HMRC and an End of Year declaration within nine months of the end of the period of account.
- Options to simplify tax for unincorporated businesses, including changes to basis periods, extending cash basis accounting and reducing reporting requirements for unincorporated businesses.
- Extending cash basis accounting to unincorporated property businesses.
- Voluntary pay as you go arrangements, where taxpayers can pay what they want when they want, subject to the normal payment on account rules. Regular direct debit arrangements and quarterly payments on account are also being considered.
- Changes to tax administration, including changes to the enquiry regime, penalties for late submission of quarterly updates and End of Year declarations and also the late payment of tax.
- How HMRC will make better use of the information which they currently receive from third parties, including updating of PAYE codes more regularly and coding out of bank interest via PAYE.

Under the Government's plans, the changes to the tax system will be introduced gradually between 2018 and 2020. We will keep you informed of developments.

Internet link: [GOV.UK MTD](#)

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COMPANY CARS – LIST PRICE OR LOW EMISSIONS?

"The most important factor when choosing your company car is low CO2 emissions" – right? Probably not top of everyone's list of important features but as set out below, this does impact on the tax charge for a company car.

Company car benefits are calculated by multiplying the list price of your car (plus options) by a percentage, based upon the car's CO2 emissions. The lower the CO2 emissions are, the lower the percentage.

Many purchasers therefore look to minimise the emissions factor when buying a company car, but looking at the list price is just as important.

This is especially relevant when you consider that most manufacturers charge more for the diesel equivalent, than they do for the petrol and the following examples show that choosing the petrol model, with a lower list price, can

result in cheaper company car tax, despite petrol cars having a higher emissions factor:

- Audi A4 Saloon 1.4T FSI Sport 4d – List price £27,245. CO2 emissions 126 g/km. Monthly tax (at 40%) = £200pcm.
- Audi A4 Saloon 2.0 TDI S Line 4d - £31,945. 106 g/km. Monthly tax = £224pcm.
- Ford Fiesta ST-Line (Navigation) 1.0T EcoBoost 100PS Stop/Start 5d - £16,590. 99g/km. Monthly tax (at 20%) = £44pcm.
- Ford Fiesta ST-Line (Navigation) 1.5 TDCi 95PS 5d - £17,690. 94g/km. Monthly tax = £53pcm

It is also important to consider future company car tax rates, as these are constantly changing.

If you would like us to consider the best overall option for both you personally, as the recipient of the car benefit, and your company and the cost to it of providing the benefit, then please contact us as

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ADVISORY FUEL RATES FOR COMPANY CARS

New company car advisory fuel rates have been published which take effect from 1 September 2016. The guidance states: 'You can use the previous rates for up to one month from the date the new rates apply'. The rates only apply to employees using a company car.

The advisory fuel rates for journeys undertaken on or after 1 September 2016 are:

Engine size	Petrol
1400cc or less	11p
1401cc - 2000cc	13p
Over 2000cc	20p

Engine size	LPG
1400cc or less	7p
1401cc - 2000cc	9p
Over 2000cc	13p

Engine size	Diesel
1600cc or less	9p
1601cc - 2000cc	11p
Over 2000cc	13p

The **guidance** states that the rates only apply when you either:

- reimburse employees for business travel in their company cars
- require employees to repay the cost of fuel used for private travel

You must not use these rates in any other circumstances.

If you would like to discuss your car policy, please contact us.

Internet link: [GOV.UK AFR](#)

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PAYE SETTLEMENT AGREEMENTS (PSA)

PAYE Settlement Agreements allow businesses to settle the tax and national insurance liabilities otherwise suffered by their employees, when provided with certain benefits. Some of the common benefits covered under a PSA are gift vouchers and staff entertaining.

The existing process to apply for a PSA is lengthy and many steps are involved. HMRC have acknowledged this and are currently consulting on simplifying the process.

The current process is for the employer (or their agent) to apply to HMRC for an agreement every year. The paper agreement is then signed by HMRC and the employer. Many PSAs are not applied for until after the end of the tax year in question, because for most employers it is unlikely that they will be able to foresee what benefits will be provided in the tax year.

HMRC have agreed that asking the employer to apply year on year is overly burdensome and could lead to delays in the system with employers rushing to get the agreements in place by the deadline (6 July following the end of the tax year). By removing this step, this would provide simplification to the PSA process. Employers would instead just need to assess whether the benefits are eligible for inclusion in a PSA by checking the guidance and legislation.

It has also been proposed that HMRC should consider a digital solution to the PSA process, by way of an online return instead of a paper one. HMRC agrees that this could eliminate frequent manual or processing errors by HMRC. This is in line with the government's plans to "Make Tax Digital".

The government is content with an annual return as it has been since PSAs were created, but is asking for opinions on whether it should be aligned with PAYE reporting.

HMRC are also considering whether to align the submission and payment deadlines with those of the P11D process. It has been suggested that the calculation submission deadline be 6 July after the tax year, and the payment deadline 19/22 July after the tax year. Currently the tax payable under a PSA is not due until 19 October following the end of the tax year

The government has agreed with comments that more clarity is needed on what items are eligible to be included in a PSA, but does not want to produce a strict list as they want a PSA to remain flexible. Many items will no longer need to be covered by a PSA, particularly if the item is regarded as a minor item, as this may now be covered by the new trivial benefit rules.

The consultation is due to end on 18 October 2016.

If you think you may need to put a PSA in place, or have any queries on the current process, please get in touch.

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BENEFITS IN KIND – MAKING GOOD

"Making good" is where an employee gives something (usually a cash payment) to their employer in return for a benefit in kind. Making good has the effect of reducing the cash equivalent of the benefit in kind, often to zero. This avoids a tax charge arising on the benefit provided.

Many employers and professional bodies have complained that the current rules on the timing of making good benefits in kind are inconsistent. Also, as there is nothing in statute, this inconsistency has been abused by some employers. This has prompted HMRC to review the existing rules and they are currently consulting on this.

There are inconsistencies on the making good deadlines as they differ depending on the benefit provided. Some benefits should be made good by the end of the tax year and some by 1 June following the tax year in question. The timing is also dependent on whether the benefit is dealt with through the P11D process or through payroll benefits.

In the consultation, it has been suggested by HMRC that the end of the tax year should be the making good deadline for all benefits, except those that it is difficult to quantify for that deadline.

Here are some examples of the current deadlines for making good certain benefits:

End of tax year	1 June
Private use of company car or van benefits	Car and van fuel benefits
Living accommodation	Credit tokens
Non-cash vouchers	Beneficial loans
Medical insurance	
Loan of business assets	

The consultation is due to end on 4 October 2016.

If you would like any more information on this then please get in touch.

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GUIDANCE FOR EMPLOYERS

HMRC have issued their latest guidance to employers in the August edition of the Employer Bulletin. This publication, which is issued every two months, includes articles on:

- expenses and benefits in kind consultations
- HMRC Toolkits – helping to reduce errors
- Automatic penalties for late intermediary returns
- the Apprenticeship Levy and apprentices
- guidance on paying HMRC
- student loan deductions
- Automatic enrolment update
- National insurance contributions for employees over State Pension age
- Basic PAYE tools usage
- the impact on tax codes of the Personal Savings Allowance.

For help with your payroll contact us.

Internet link: [Employer Bulletin](#)

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DELAYS ON TAX REFUNDS

Individuals who are not within the self assessment system but have all their income taxed under PAYE will be starting to receive end of year tax calculations (P800) from HMRC for the 2015/16 tax year.

Historically, if an individual was due a repayment once a calculation had been issued, this would be automatically issued at the same time or shortly after the calculation. This will no longer be the case for taxpayers who are due a refund for 2015/16. Instead, those individuals will be encouraged to go to their Personal Tax Account (PTA) and submit their bank details to get a refund. The refund should then be issued within three to five days. This involves the individual registering for online services with HMRC if they have not already done so.

Alternatively the taxpayer can call HMRC (0300 200 3300) and ask for the refund to be issued by cheque, although most will experience lengthy delays in getting through to someone on the helpline.

If an individual is due a refund and does neither of these things, the repayment will eventually be issued, but not for a period of 45 days. Therefore if you want to receive the money earlier you will need to make contact with HMRC one way or another.

Later this year we are expecting HMRC to introduce an online payment service for those who haven't paid enough tax through PAYE, and this will follow a similar approach.

This is all part of the 'Making Tax Digital' plans and is designed to encourage more taxpayers to access and use their PTA. If you have received a P800 calculation and would like this checked, or are not sure what action you should take, please do get in touch.

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WHAT IS A DWELLING?

HMRC have recently announced a change of policy as far as their interpretation of what actually constitutes a dwelling for VAT purposes is concerned. Up to now HMRC have not accepted that a dwelling could be formed from more than one building but from 23 August 2016, they now accept that this can be the case. This will have a fairly limited impact and only affect those construction or conversion projects where the usual features of a dwelling are spread over/contained in more than one structure. The updated guidance states that:

“A combination of buildings may form a single dwelling, provided they are designed to function together for that purpose. For example, where you have two buildings, one building may comprise a lounge and kitchen, and the other comprises the bedrooms and bathroom. The buildings must be constructed or converted under a single project and single planning consent.”

This change does present an opportunity for retrospective claims over the last four year period but HMRC will refuse claims where 'unjust enrichment' is a feature.

If you think you may be affected by this change – principally house builders and other trades involved in construction and conversion projects of this kind, please do get in touch.

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HMRC GENUINE AND PHISHING/BOGUS EMAILS AND CALLS

HMRC have issued an update of their guidance on how to recognise genuine HMRC contact be it via email or text.

They have also issued a warning regarding two telephone scams that they are aware of.

The details of the two phone scams are as follows:

- Taxpayers receive telephone calls claiming to be from HMRC requesting personal information in order to receive a tax refund, or to demand money for an unpaid tax bill.
- A recorded message is left, allegedly from HMRC, advising "that HMRC are bringing a lawsuit against the individual and is going to sue them. The recipient is asked to phone 0161 8508494 and press "1" to speak to the officer dealing with the case.

HMRC are advising that taxpayers should not reply to the message and should report this to Action Fraud, or you can call Action Fraud on 0300 123 2050.

Internet links: [HMRC guidance](#) | [Employer Bulletin](#)

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GOVERNMENT URGED TO DELAY THE LAUNCH OF LIFETIME ISA

The government is being urged by both pension providers and banks to delay the April 2017 launch of the new Lifetime ISA as they are warning that they will not be ready to offer the savings product by this time.

A new Lifetime ISA introduces a new type of savings account for adults under the age of 40. Individuals will be

able to contribute up to £4,000 per year and receive a 25% bonus from the government. Funds, including the government bonus, can be used to buy a first home at any time from 12 months after opening the account, and can be withdrawn from age 60 completely tax-free.

Further details of the new account, which is expected to be available from 2017, are as follows:

- Any savings an individual puts into the account before their 50th birthday will receive an added 25% bonus from the government.
- There is no maximum monthly contribution and up to £4,000 a year can be saved into a Lifetime ISA.
- The savings and bonus can be used towards a deposit on a first home worth up to £450,000 across the country.
- Accounts are limited to one per person rather than one per home, so two first time buyers can both receive a bonus when buying together.
- Where an individual already has a Help to Buy ISA they will be able to transfer those savings into the Lifetime ISA in 2017, or continue saving into both. However only the bonus from one account can be used to buy a house.
- Where the funds are withdrawn at any time before the account holder is aged 60 they will lose the government bonus (and any interest or growth on this) and will also have to pay a 5% charge.
- After the account holder's 60th birthday they will be able to take all the savings tax-free.

In the article published by 'This is Money', pension providers Aegon and Standard Life have stated that they have delayed their plans until final details regarding the Lifetime ISA are released.

The Financial Conduct Authority (FCA) is yet to consult on the initiative. Steven Cameron, Pensions Director at Aegon, stated that a consultation is 'likely to take three months' to carry out.

Meanwhile, a spokesperson for Standard Life said: 'As we want the Lifetime ISA to be a success, we would prefer that its launch is delayed until providers receive more detail on the product and how it is to be implemented.'

The Treasury is expected to confirm full details in the autumn.

Internet link: [Article](#)

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COMPLAIN TO HMRC - ONLINE

HMRC have always had complaints procedures and have extended these to now include an online form which can be used to make complaints about your self-assessment and PAYE. The guidance also includes other ways to complain.

If you would like help with PAYE or self assessment issues please contact us.

Internet link: [GOV.UK guidance](#)

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