haysmacintyre

Private Client Briefing

Summer 2021

Looking ahead: payments on account due 31 July 2021

COVID-19 SEISS fifth grant

Capital Gains Tax review: further proposals

Cryptoassets

Contents

Welcome from the editor

Private Client Briefing Summer 2021

Welcome to the latest edition of our Private Client Briefing, which summarises a number of issues and opportunities for individuals, families and trustees.

As we hope for the further easing of COVID-19 restrictions, and watch with nervousness the progress of the latest variants, we see pent up demand in the economy and a reduction in government COVID-19 support. With a successful vaccination programme, will we see a return to ‘normal’ by the autumn? Can we expect the Chancellor to deliver another Budget this calendar year, or will he wait until the spring to make key decisions on the timing and speed of financial stimulus and debt reduction plans?

In the meantime, HMRC has committed to focusing more resource on tax enquiries and investigations, including into the Coronavirus Job Retention Scheme (CJRS) and Self-Employment Income Support Scheme (SEISS) claims. Our Tax Disputes and Resolutions team is well placed to deal with these and other enquiries.

All best wishes to you and your families at this challenging time, from everyone at haysmacintyre: we look forward to hearing from you, if we can assist in any way.

Looking ahead: payments on account due 31 July 2021

Second payments on account (POA) for the 2020-21 tax year are due by 31 July 2021. This payment consists of 50% of your 2019-20 tax liability.

POAs are advance payments towards your tax bill which are calculated based on your previous year's income. They are made twice a year via Self Assessment to spread the cost of the upcoming year's tax. Individuals with a tax liability less than £1,000, or who have paid more than 80% of their tax liability via their tax code, will not be required to make a POA.

If you still have tax to pay after you have made POAs, you must make a 'balancing payment' by midnight on 31 January 2022. Interest will be charged on any late payments due, and the current interest rate stands at 2.60% from 7 April 2020.

If you have difficulty in meeting your payment schedule, there may be ways to mitigate your position. For example, you can apply to reduce your POA if you believe your 2020-21 tax liability is lower than for 2019-20. We encourage you to complete your 2020-21 tax return in advance of 31 July 2021, to allow an application to reduce your POA to be made, if applicable. Separately, HMRC may agree to a Time to Pay (TTP) arrangement, if cashflow requires.

Please get in touch with your usual haysmacintyre contact or a member of our Private Client team if you would like further information.

COVID-19 SEISS fifth grant

The Government has announced a fifth grant under the SEISS which will cover the period from May 2021 to September 2021. Whilst the full details of the fifth grant are yet to be released, it is expected that it will be open to claims by the end of July 2021.

SEISS provides support for those whose self-employment income has been affected by the pandemic.

The grant itself is expected to be based on the reduction of your self-employment turnover between April 2020 and April 2021. Those who have had a reduction greater than 30% should be able to claim the full grant, which will be 80% of three months average profits capped at £7,500.

Support for those who have seen a smaller reduction will remain, but the new grant will instead be 30% of three months' average profits and capped at £2,850.

Reporting grants received
Those who receive SEISS grants must report the amount received on their Self Assessment tax returns. The grants need to be reported in the tax year in which they were received, rather than in the accounting period for the business they relate to. Therefore, there may be a disparity between how the grants are reported in your accounts and how they are reported on your return for those whose accounting periods do not end on 31 March or 5 April.

Grants claimed by partnerships
Please see Jenny's partnerships update on page 18.

For further details, please contact:

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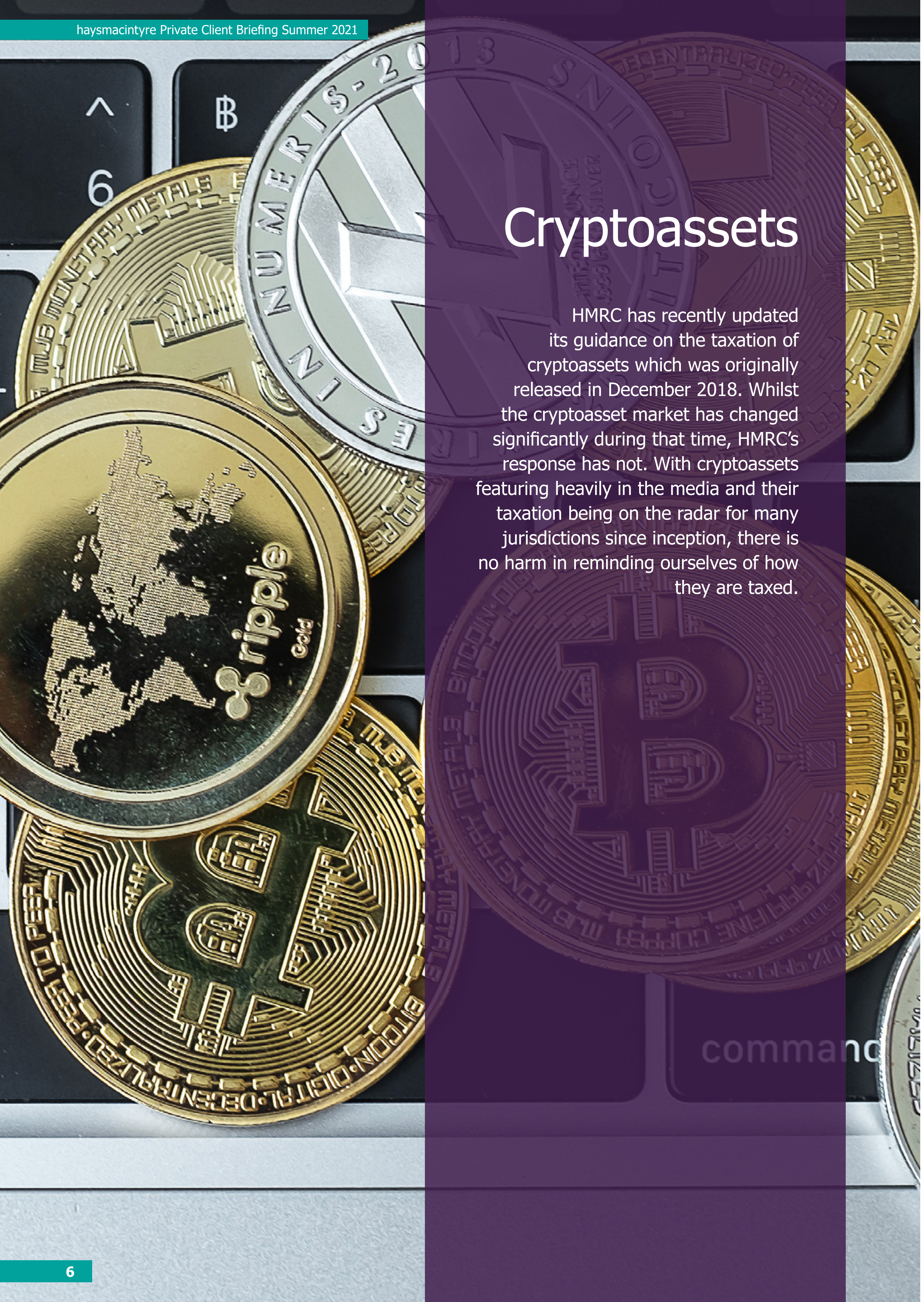
Capital Gains Tax review: further proposals

Further to its first report, published in November 2020, the Office of Tax Simplification (OTS) has published its second report which considers a range of key practical, technical and administrative Capital Gains Tax (CGT) issues.

The report makes 14 recommendations, including the following:

- Main homes
  - The Government should consider adjusting Private Residence Relief to cover developments in a taxpayer's garden, which the taxpayer subsequently occupies
  - The Government should review the practical operation of Private Residence Relief nominations, raise awareness of how the rules operate and in time enable nominations to be captured through the Single Customer Account
- Divorce and separation
  - The Government should extend the 'no gain no loss' window on separation to the later of: the end of the tax year at least two years after the separation event and any reasonable time set for the transfer of assets in accordance with a financial agreement approved by a court
- The Government should consider extending the reporting and payment deadline for the UK Property tax return to 60 days (from 30 days), or mandate estate agents or conveyancers to distribute HMRC provided information to clients about these requirements.
- HMRC should integrate the different ways of reporting and paying CGT into the Single Customer Account, making it a central hub for reporting and storing CGT data
- HMRC should improve its guidance in in a number of areas

We await the Treasury and HMRC's response to these recommendations, and those in the first report. It remains likely that CGT rates will increase, to assist in recouping COVID-19 response borrowing. To discuss how you might ensure that current CGT rates apply to gains, contact Katharine Arthur using the details below.



Cryptoassets

HMRC has recently updated its guidance on the taxation of cryptoassets which was originally released in December 2018. Whilst the cryptoasset market has changed significantly during that time, HMRC's response has not. With cryptoassets featuring heavily in the media and their taxation being on the radar for many jurisdictions since inception, there is no harm in reminding ourselves of how they are taxed.

For now, we are governed by HMRC guidance and not legislation. Similarly, other countries do not have legislation to govern the tax on cryptoassets and rely on guidance as well. Given the unregulated nature of such assets, tax authorities across the world are concerned with the potential scale of tax evasion taking place. Small measures are already being taken for example, on page one of the 2020 US Tax Return, there is a question asking about cryptoasset holdings.

CGT?

Most trades in cryptoassets should be capital in nature and subject to the more favourable CGT regime, which has a tax rate of 20%. However, there may be some who will be 'trading' in cryptoassets and risking exposure to the Income Tax regime, which have tax rates of 20%, 40% and 45%, as well as National Insurance contributions. Determining the nature depends on a range of factors, such as the frequency of trade, the level of organisation to facilitate the trade and the intention. Of course, the opposite would be true if one is realising losses in cryptoassets as trading losses could be set against other income, thereby saving tax at the Income Tax rates.

What to look out for

On the basis that the transactions will be subject to CGT, the sale would be treated in the same way as the sale of shares, broadly being proceeds less costs, giving rise to the gain to be subjected to CGT. Any losses will be set against other gains in the same tax year up to the annual exemption, and any excess losses carried forward to be set against future capital gains.

Selling one type of cryptoasset for another is also a disposal for CGT purposes, and anyone who regularly exchanges such assets will need to keep track of the purchases and sales to ensure they comply with reporting requirements on their tax return.

It is more than likely that the cryptoasset will be held in a non-£sterling denomination. To compute the UK gain or loss position, the proceeds and costs will need to be converted into £ sterling at the date of acquisition and purchase. This could mean that an exchange gain or loss is inevitable, even if the base currency shows something different.

Employers may consider rewarding employees with cryptoassets. As these assets are readily convertible assets, they will be subject to the usual employment tax deductions for both the employee and the employer.

As with any other asset, the value of the cryptoasset at the time of death will form part of a deceased's estate for Inheritance Tax (IHT) purposes. It is therefore vital that some form of IHT planning is undertaken and that an up to date will is in place.

Mitigating the liability

Purchasing Enterprise Investment Scheme (EIS)/ Seed Enterprise Investment Scheme (SEIS) shares will provide Income Tax relief at 30%/ 50%, as well as the opportunity to defer capital gains to a future tax year, or exempt capital gains from being taxed altogether. Whilst these can be risky investments, they are perhaps less so than the cryptoassets themselves.

If the cryptoasset is deemed to be worthless and there is no real scope of recovering the purchase costs, then a claim for negligible value relief could be made. This would treat the asset as being sold for £nil or the negligible value and repurchased at the same price. The asset would still be owned but a capital loss would be available.

UK CGT is based on one's residency and so if a large gain is to be realised, and it is practical to do so, one could leave the UK tax residency net prior to sale and not become a UK tax resident again within five years.

Looking ahead

The G7 summit recently took place, where the richest nations have agreed to target the tech giants; perhaps a similar item will be on the agenda for cryptoasset regulation and taxation. Or perhaps countries will legalise cryptoassets as a tender, such as planned by El Salvador.

In the UK at least, the OTS has put forward to the Chancellor a report on the 'simplification' of CGT. With so much borrowed by the nation due to the pandemic, there is speculation that rates of CGT will increase to help pay for this.

Whatever the outcome and whatever your plans are, it is always recommended to seek professional advice on how to navigate through the tax regime, in order to minimise your tax exposure.

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A nudge from HMRC

Over the last year HMRC has issued a significant number of 'One to Many' communications commonly known as 'nudge letters', encouraging taxpayers to review their tax affairs.

The nudge letters issued to date have covered a wide range of topics including overseas income and gains, CJRS, Research & Development, Annual Tax on Enveloped Dwellings (ATED), CGT on property disposals and CGT on deferred consideration on business disposals. HMRC receives data from a vast number of sources and believe that the use of nudge letters provides it with a cost-effective approach to communicate with a large number of taxpayers.

Nudge letters are a standard communication on a specific topic from HMRC to a large group of taxpayers. The letters to date relate either to where HMRC have identified a potential loss of tax or, more broadly, are an educational exercise. The communication can be delivered by letter or even digital means including Personal Tax Accounts, emails or SMS texting. It is worth noting that agents do not always receive a copy of these communications from HMRC. The communications are aimed at encouraging taxpayers to review their own tax affairs and voluntarily correct any errors or omissions. It is important to note that a nudge letter is not a statutory enquiry into a taxpayer's affairs. However, these letters should not be ignored and appropriate action must be taken.

If HMRC subsequently open an enquiry and find an error, failure to take action following receipt of a nudge letter could lead to higher penalties being charged on culpable duties. Our experience has shown that there can be inaccuracies with some of the information held by HMRC, or it has been interpreted incorrectly. If you have received a nudge letter and HMRC invite you to respond, you should do so before the deadline. This does not mean signing and sending the requested certificate to HMRC. There is no statutory requirement to do so and we do not recommend the completion of these certificates; a letter to HMRC will be sufficient. We recommend you seek professional advice following receipt of an HMRC nudge letter or statutory enquiry.

Alternatively, if you have not received a letter from HMRC, but have found a mistake in your filings to HMRC and require professional advice, please contact the Tax Disputes and Resolutions team at haysmacintyre.

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Buying a UK home – 'usufructs'

Advising on stamp duty used to be limited to the conveyancing solicitors, but since the introduction of Stamp Duty Land Tax (SDLT) and its ever increasing complexity, as well as the risks of getting it wrong to the conveyancer, it has required specialists across both the legal and accounting profession to take a much closer look.

An unpredictable area relates to 'usufructs', which is a commonly used concept in Civil Law jurisdictions (primarily in Europe) for families in relation to real estate. Most commonly, parents give their property to their children (the Owner) but retain the right to use/enjoy the property for the rest of their life (the Usufructuary).

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The problem comes when the Owner moves to the UK and looks to buy a UK home, as an additional 3% SDLT is due, where a buyer already owns a property. On the face of it, the Higher Rate of SDLT (3%) must also be paid because of their interest in their parents' home and most conveyancing solicitors will complete the SDLT return in this way. However, in some circumstances it is possible to conclude that the Usufructuary is in fact the owner of the other property, for the purposes of this part of the SDLT rules, so the Higher Rate does not in fact apply to the Owner on their UK home purchase.

The savings can be material at £30k per £1m purchase price.

Please contact me for more information.

Pensions Annual Allowance

From 6 April 2020, the Annual Allowance (AA) for pensions changed for higher earners. The maximum amount of tax relieved pension savings accrual in a year for the majority of earners (including employer contributions) remains at £40,000. Higher earners with adjusted income in excess of £240,000 saw their AA tapered to £10,000, and for earners with adjusted income in excess of £300,000, the AA is reduced further to £4,000. The rule, which enables taxpayers to increase the AA limit by utilising any unused AA from the previous three years, is unchanged.

A tax charge (AA pension tax charge) may be due if your pension savings exceed the available threshold. A charge may still apply where no tax relief has been obtained, if no contributions have been paid, or if the 'pension input amount' into the pension scheme exceeds the AA. It is the responsibility of each individual, with assistance from their advisors, to determine any AA charge. The 'excess' is treated as the taxpayer's taxable income and subject to the appropriate rate of tax. Where this charge applies, it is possible to include this in a Self Assessment tax return and settle the charge as part of the Self Assessment tax liability.

Alternatively, it is possible to file an election to request that the charge is paid from the individual's pension benefits, which is known as a 'Scheme Pays Election'. If a Scheme Pays Election is filed, details of the charge must also be included in the individual's Self Assessment tax return, with a note that a Scheme Pays Election has been filed. In this instance, the charge does not need to be included as part of the Self Assessment tax liability.

There are strict criteria that must be met when filing a Scheme Pays Election:

1. An official Scheme Pays Election form must be completed, signed and dated. The most common schemes are the NHS Pension and Teachers' Pension, but there are many others, particularly members of defined benefit schemes.
2. The form must be filed with the pension scheme administrators by 31 July, following the end of the tax year when the charge arose. For example, a charge in 2020/21 must be filed by 31 July 2022. However, for individuals under the NHS Pension scheme, the usual filing deadline of 31 July 2021 for a charge in 2019/20, has been extended to 31 March 2022.
3. Once a notice has been filed, it cannot be withdrawn or revoked

Please get in touch with your usual haysmacintyre contact or a member of our Private Client team if you would like further information.

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Residential property disposals and penalties

The way in which the sale (or other disposal) of UK residential property is reported changed fundamentally on 6 April 2020. Under this new policy, CGT must be calculated and a payment on account of the CGT paid within 30 days of completion of the property disposal via the new CGT return online.

You will need to report and pay CGT when, for example, you sell or otherwise dispose of any of the following:

- A property that you have not used as your main home
- A property that has been used as your main home, but the sale includes land/buildings that do not qualify for Principal Private Residence (PPR) relief
- A holiday home
- A residential property which has been rented out
- If you are a non-resident selling any property situated in the UK, whether residential or commercial

The new rules will not apply where the gain is not subject to CGT for UK residents in the following scenarios:

- Where PPR relief is claimed in full
- The gain is covered by unused capital losses
- The gain is within the annual exemption
- The property was sold at a loss

If you are in Self Assessment, the disposal must also be reported on your tax return to ensure that other capital gains are taxed correctly, whilst claiming any additional reliefs or losses. The tax paid on the CGT return will sit as a credit against your total tax liability under Self Assessment.

Penalties
If the CGT return is not filed and/or the tax not paid within the 30-day period, penalties are applied in a similar way to Self Assessment with an automatic late filing penalty of £100. If the return remains outstanding after three months, daily penalties of £10 per day may start to accrue, with a further penalty of the higher of £300 or 5% of the outstanding tax due after six months and 12 months, respectively.

Unlike Self Assessment, HMRC are not currently issuing penalties for the late payment of CGT in relation to residential property disposals, and do not propose to do so until after 31 January 2022. Despite the relaxation of these rules, interest will still be payable on any outstanding balance, although HMRC have stated that provided you pay the CGT calculated (using the reasonable estimate) on time, no late-payment interest should apply if the estimate turns out to be too low and you pay any difference by the normal Self Assessment due date.

It is important that you notify your usual haysmacintyre contact as soon as you put the property on the market or have accepted an offer on the property. This is so we can complete an accurate calculation of your gain as soon as completion has occurred, whilst ensuring the return is submitted ahead of the tight deadline set by HMRC to avoid penalties or interest.

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EIS Income Tax relief and CGT deferrals

The EIS provides tax incentives from both an Income Tax and a CGT perspective to encourage investors to put capital investments into small unquoted trading companies. Income Tax relief is given at 30% of the cost of your investment either through your Self Assessment tax return or as a standalone application to HMRC using the EIS3 certificate issued by the trading entity. If the shares are held for more than three years, there will be no clawback on the Income Tax relief obtained and the eventual disposal be will exempt from CGT. In addition to these attractive reliefs and exemptions, there is also an opportunity to defer a CGT liability on a separate disposal. The CGT deferral available is on 100% of the investment, however the keyword here is that the relief is a deferral as opposed to an exemption.

Deferred gains will come back into charge at the CGT rate at the date of one of the following events happening:

- The EIS shares are sold
- The transfer/gift of a share
- The shares ceased to be eligible for EIS relief
- If you were to become a non-resident or ordinarily resident in the UK

Given the current speculation surrounding a potential increase in the CGT rate, it may not be advisable to take up this deferral on gains incurred in the current year.

An example

Taking a simple example of a £100,000 investment made on 30 June 2021: as a higher rate taxpayer, deferring a gain on shares of £100,000 would reduce your CGT liability by £20,000 (£10,000 for basic rate tax payers) under current tax rates, along with the £30,000 Income Tax reduction.

However, if this investment were to fall into one of the above criteria, the gain will come back into charge at the prevailing rate of CGT. It is likely that CGT rates will increase, therefore depending on the potential 'new CGT' rate it may be advisable to pay the CGT at the current known rates now. For the deferral to be possible, the EIS shares you subscribe for must be issued to you in the period beginning one year before, and ending three years after, the date of the disposal for which you wish to claim deferral relief.

In this example using 30 June 2021 as your date of investment, you can defer gains that were disposed of between 30 June 2020 and 30 June 2024. Please note that the CGT deferral can be applied to a different year to the one in which you claim the Income Tax relief. Therefore, if the CGT rate does increase within the above time period, it may be more beneficial from a tax perspective to claim this at a later date.

The speculation surrounding CGT and the flexibility in relation to EIS make this a technical area, so please discuss this on a case by case basis with your usual haysmacintyre contact.

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Equity release

Equity release, effectively mortgages for the elderly, is becoming more popular as a means of funding retirement, but it is important to consider all your options before committing to a long-term plan. Falling annuity rates mean that those in retirement cannot necessarily rely on their pension to provide for all their financial needs. For many people, their most valuable asset is the family home and the inherent value can only be accessed by selling up and downsizing – often a daunting and unwelcome prospect for many.

Equity release allows people to remain in their homes while accessing some of its value for other uses, but what are the tax implications of this?

It can be quite tax efficient. The amount borrowed becomes a debt on the estate which ultimately is deductible for IHT purposes on death. The freed-up equity can be used to fund your ongoing lifestyle, effectively supplementing existing income. Alternatively, the additional cash can provide financial support to children and grandchildren as an advance on their inheritance, allowing them to take their own first step on the housing ladder.

If the released equity is given away, it will be treated as a potential exempt transfer and will be completely free of IHT if the donor survives more than seven years from the date of the gift. On death, the debt and accumulated interest will become repayable; careful thought is required as the interest can accumulate rapidly as interest rates tend to be higher than regular loans or mortgages. For a £50,000 loan at 5% interest, the loan balance would be £63,814 after five years, £81,445 after ten years and £103,946 after 15 years. Some schemes allow for interest to be paid throughout the loan rather than accumulated, which reduces the final repayment but obviously this requires a source of income to fund.

Financial advice and products are now regulated by the Financial Conduct Authority, so previous concerns about negative equity and forced sales are no longer common. However, the FCA requires an applicant to receive both independent financial and legal advice before entering into equity release.

Equity release can be an expensive option; however it certainly has its place where extra resources are required to supplement income or to make gifts to grandchildren. Should you have any questions relating to equity release and IHT, then please contact me or your usual haysmacintyre advisor.

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Partnerships: what's new?

COVID-19 and SEISS grants
If you are a partner in a partnership and have claimed one of the SEISS grants due to COVID-19 (which has had an adverse effect on the partnership business), where and how this is recorded depends on who received the grant.

If you made the claim and received the income into your individual bank account, then this is not recorded as partnership income in the partnership accounts; it however must be reported separately in the relevant section of your partnership supplementary personal tax return pages. The first three grants should be included in your 2020/21 tax return and the fourth and fifth payments included in your 2021/22 tax return, in both instances on the partnership supplementary pages.

However, if you claimed one of the SEISS grants and it was paid directly into the partnership bank account, it is treated as partnership income and must be included in the partnership accounts and distributed to all partners, based on their profit share arrangements. The grant will form part of the turnover for the relevant accounting year, which may change the tax year in which they are taxed.

This can cause a problem with compliance checks between the amounts paid out and the taxable amounts shown in the tax returns as they will not correspond. The individual partner who claimed the SEISS grant will not record any SEISS payment in the relevant section on their tax return, as their share of the taxable grant is already included in their share of partnership profits.

The SEISS grants are not subject to VAT and there is no requirement to register for VAT if the grant received pushes the turnover above the VAT registration threshold. Tax returns for the year ended 5 April 2021 must be filed with HMRC by 31 October 2021 for paper returns or by 31 January 2022 for online returns.

Partnership loss relief
Partnership losses are allocated between partners in accordance with profit sharing ratios. Each partner can then make a loss relief claim based on their own personal circumstances.

A temporary extension was introduced to the carry back period from one to three years, for trade losses arising in the tax years 2020-21 and 2021-22 only, with a limit of £2m for each year. This allows losses to be set against all other income, including savings received in earlier tax years.

It is important to remember there are restrictions on the amount of Income Tax relief that an individual can claim. The trading loss can be offset against other income subject to a limit which is usually the greater of £50,000 or 25% of the adjusted total income of the year.

The time limit for making a claim in respect of the 2021 tax year is 31 January 2023, and 31 January 2024 for a claim in the 2022 tax year.

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Employee Ownership Trusts

Whilst the new Mrs Johnson may not be a fan of their furniture, the Government continues to encourage more companies to follow the 'John Lewis model' of increased employee ownership. This encouragement comes in the form of the Employee Ownership Trust (EOT) which provides generous tax breaks to shareholders who sell their shares to this specific form of employee benefit trust.

The model works as follows:

1. The company forms an EOT
2. Shareholders sell their shares to the EOT for full market value
3. The purchase price is initially left outstanding as a debt from the EOT to the shareholders
4. As the company generates profits, contributions can be made by the company to the EOT
5. The EOT uses these contributions to repay the shareholders, so the sale is 'self-funded' from future profits

Why would shareholders want to do this rather than seek a standard trade sale?

- A controlling interest can be sold to the EOT free of CGT, IHT and Income Tax
- It allows employees to indirectly own the company without having to fund the purchase personally
- The selling shareholders can receive full market value for the shares which is fixed at the start rather than having to rely on any 'earn out' clauses
- The sale process is likely to be quicker and more straight forward than a third-party sale
- The directors can remain in post after the sale and continue to receive a market rate remuneration package
- Greater employee engagement and drive to grow the company
- The EOT can pay tax free bonuses to all employees of up to £3,600 per year

As you would expect, there are conditions that must be met by the company and the EOT. These include:

- The company must be trading or the holding company of a trading group
- The EOT must hold at a least a 51% controlling interest in the company
- The number of continuing shareholders who are directors or employees of the company must not constitute more than 40% of the total number of employees
- The application of the trust's property (the shares) must be for the benefit of all employees on the same terms, although benefits can be linked to remuneration, length of service and hours worked

If you think the EOT model would work for your business, please contact me or speak to your usual haysmacintyre contact for help and advice.

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British Nationals (Overseas) in Hong Kong

The UK has launched a new visa for British Nationals (Overseas) from Hong Kong and their close family members. This is known as the BNO visa and allows successful applicants to live, work and study in the UK, for up to five years. Once an individual has lived in the UK, for five years they can apply to settle in the UK.

In the first two months, more than 34,000 applications were filed, with many more expected to follow, with up to 332,000 Hong Kong individuals estimated to come to the UK over the next five years.

Individuals relocating to the UK will have many issues to consider, including sourcing housing, schools, jobs etc. Many will look to structure their financial affairs, perhaps taking advantage of their non-UK domicile status. Pre-UK arrival planning can ensure that capital and income requirements in the UK can be structured efficiently from an Income Tax, CGT and IHT perspective. The application of the Statutory Residence Test to determine when UK tax residence will apply is key to effective planning in advance.

If you are considering applying for a BNO visa and would like assistance, please contact me using the details below.

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HMRC Trust Registration Service extension

Until now, only trusts that had a tax liability to report were required to register with the Trust Registration Service (TRS). However, HMRC is now extending the scope of requirement to non-tax paying trusts to register with the TRS. HMRC is also requiring bare trusts to be registered with the TRS.

A bare trust arrangement is where you hold an asset in your name but for the benefit of someone else, perhaps a bank account for a minor child or the title of a property on behalf of multiple owners.

The rollout of the extended service has been delayed and we do not expect to be able to register non-tax paying trusts or bare trusts until later on in the year, however, we will now be contacting trustees of trusts that fall into that category to prepare for when the service opens. Due to this delay, HMRC intends to extend the previous deadline of March 2022 for registration to allow 12 months to register the trust from when the service becomes available.

In addition to this, HMRC is requiring trustees to supply further information about the trust to add to their record as follows:

- If the trust is an express trust
- If a non-UK trust has a business relationship in the UK
- If the trust has purchased any UK land or property
- If the trust has a controlling interest in a non-EEA company

In relation to individuals, further information required includes country of residence, country of nationality and if the individual has mental capacity at the time of registration.

There are still certain trusts that do not need to register with the TRS and if you are uncertain whether your trust is required to register, please do get in touch.

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Family fortunes!

Be it marriage, divorce, children leaving home, birth or death… there are many family matters that may require careful planning around tax, but it is not normally the first thing that springs to mind. We detail below a case study, based on an advisory project we carried out, where minimising the tax cost had a major effect in preserving the overall family wealth.

Three brothers migrated to the UK in the 1970/80s. From humble beginnings working in a London hotel, they built a significant property business which to date includes commercial and residential properties, with some major London hotels. The properties are worth a considerable amount, but, as is the nature of a business grown over a few decades (and given the vagaries of the conditions laid down by some lenders in the early days), these properties are held in a mix of individual ownership, partnerships and limited companies. As the brothers are non-domiciled in the UK (although now deemed domiciled for tax purposes), some properties are also held in companies within an offshore trust structure.

Unfortunately, the brothers, now in their seventies, have fallen out and cannot agree on business matters such as which properties to sell, keep or develop. They have decided to go their separate ways, with each brother taking a third of the 'family' assets to run as they please and to pass on to their own children eventually.

However, the process of doing so is not as straightforward as it sounds. Some of the limited companies hold one very valuable property which cannot be easily reconciled if it moves in its entirety to one of the brothers. We therefore carried out an exercise which involved agreeing valuations of all the properties with the brothers, carrying out some sales that they wished to do anyway and calculating the inherent gains to date on the properties that were not being sold.

We then had to work out the most tax and SDLT efficient method of getting the right properties into each brother's hands, either individually or in their own companies. This included incorporation of some of the partnerships and a re-arrangement of properties in the corporate group, followed by a demerger (to take into account the de-grouping charge that arises). They had signed an agreement many years ago that all property, including their main residences, were held for the benefit of all three, meaning that the valuations had to include those properties too. Furthermore, a reconciliation of the brothers' personal drawings from the businesses over time needed to be carried out to equalise such drawings.

Of course, we also had to look to preserve the family wealth not only now on the segregation exercise but also looking forward to the succeeding generations. This meant looking at the offshore trust structure and the protections that it afforded the brothers now they were deemed domiciled in the UK. Also, many of the companies qualified for Business Property Relief – could these be moved into a trust for future generations without incurring an immediate tax charge? Should shares in the remaining companies be passed to the children or would some form of family investment company be the best vehicle?

As you can see, the consideration of the interaction of all the taxes is paramount for this family to minimise current and future potential tax charges. At a time when each family member is feeling emotional about the breakdown in the family relationship, it is important that calm, independent advice is provided.

Not all such familial matters are on this scale, or as complex, but all require careful consideration and our team are able to assist wherever possible. If you feel like you need help with family matters, please contact a member of our Private Client team.

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Tax Disputes and Resolutions

Have you received a communication from HMRC?

Whether this is an HMRC nudge letter, investigation, settlement opportunity or you need to make a disclosure, haysmacintyre can help.

Our team works with individuals, partnerships, companies, trustees and charities and are experts in dealing with a wide range of tax disputes including:

- Tax avoidance schemes
- Negotiating tax settlements with HMRC
- Tax disclosures
- Disputes with HMRC including Alternative Dispute Resolution
- Tax investigations under Code of Practice 8 and 9

The team understand this can be a stressful time. Our discreet personal service will guide you through the process from start to finish. We will build strong working relationships with you and HMRC in order to agree resolution.

If you are required to make a payment to HMRC and worry that you will not have the funds available, depending on your circumstances, we can liaise with HMRC to agree an affordable payment plan to settle your tax liabilities.

For further information, please contact Danielle Ford, Director and Head of Tax Disputes and Resolutions, using the details below.

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