A Topical Tax Update
Russell Cockburn– March 2023

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The government is to set up 2 new "Investment Zones" around the UK to "*drive business investment*". Thes special zones will offer tax incentives and investment incentives.

This Budget 2023 measure will extend the Treasury's power to designate geographic areas as special tax sites to allow designation of such sites in or connected with Investment Zones located in Great Britain. These special tax sites in or connected with Investment Zones will be able to benefit from a package of tax reliefs including Stamp Duty Land Tax (SDLT) relief, enhanced capital allowances for plant and machinery, enhanced structures and buildings allowances and secondary Class 1 National Insurance contributions (NICs) relief for eligible employers on the earnings of eligible employees up to £25,000 per annum.

Additional Tax Reliefs are to be provided for plant and machinery and other qualifying expenditures a new 100% capital allowances deduction, to be known as "full expensing tax relief" and these will be introduced from 1 April 2023. However, this is only to be available to companies and businesses paying corporation tax.

Alongside the full expensing relief there will be a 50% deduction for Special Rate Expenditures from the same date.

For non-corporates the Annual investment Allowance is to be made permanent at its current level of £1 million p.a.

Slides 5 and 6

The 2023 Budget contained nothing new on Capital taxes, income tax rates or capital allowances apart from the above except to confirm that the current relaxations for SDLT will remain only until March 2025.

However it was announced that a new 27% refund rate for R & D Tax credits will be introduced for loss-making SME's which is intended to go some way to alleviating the impact of the reduced 86% rate of relief for such companies which was announced in the 2022 Autumn Statement.

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As announced in 2021 from April 2023 the main rate of CT in the UK will rise to 25% for companies with annual profits and gains above a threshold of £250,000.

Companies with profits below £50,000 will remain taxable at the existing 19% rate of CT.

Between these two thresholds a tapering relief, marginal small companies' relief will apply resulting a marginal rate of CT between the threshold of 26.5%.

The formula is as follows.

F X [(M – P) X (I/P)}

F = 3/200

M = upper threshold

I = taxable profits

P = profits plus dividends

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Companies dealing with their 31st March year end accounting period will perhaps be able to consider a number of planning issues which might potentially have an impact on the current future CT liabilities such as:-

- Reorganising share ownership structure
- Changing accounting dates?
- Investment companies and changing activities or moving a business.
- Timing of capital allowances claims.
- Timing of planned capital gains
- Timing of pension contributions
- When should loss relief claims be made.

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Associated Companies

It is also important to note that the regime applicable to "associated companies" which applied in the UK up until April 2015 returns to the UK's CT regime and so the thresholds are reduced proportionately where there are several associated companies.

Common Control?

Companies under "common control" are regarded as "associated" for the purposes of determining the rate of corporation tax applicable to their taxable profits and gains. The effect of this is that the thresholds at which the higher rates of CT payable are applied are reduced pro-rata according to the number of associated companies that there are. This is to prevent businesses disaggregating their profits into multiple companies in order to take advantage of the small rate of corporation tax

Control?

The definition of "control" for the purposes of determining whether companies are to be treated as associated under these rules is deliberately very broad indeed.

Firstly the test looks at control in terms of shareholdings held by individuals but it can then also take into account other means by which an individual may control one or more companies, namely any rights attaching to specific types of shares or by virtue of an individual being a significant loan creditor of a company or also by virtue of entitlement, directly or indirectly to the majority of a company's assets if it were to be wound up. Furthermore in looking to see who is in a position to control one or more companies the tests permit HMRC to take into account the shareholdings or entitlements of other individuals to whom the shareholder has a connection and then attribute those shareholdings to the individual to see if this produces a controlling relationship for two companies. If it does then the companies can be regarded as commonly controlled.

For these purposes the rules also permit HMRC in some circumstances to take into account the shareholdings held by trustees where there is a relationship between the trustees, the beneficiaries and shareholders in more than one companies.

Note however that where companies are commonly controlled by family members statute does not now normally attribute the rights and powers of family members to each other, for the purposes of carrying out these "control" association tests unless it can be demonstrated that there is "substantial commercial interdependence" between the companies, i.e., that perhaps one company buys it purchases from the other or sells its products to the other.

Substantial for these purposes is interpreted as more than 10% and it is important to recognise that in applying this concession HMRC only looks for dependence of one company on the other, thus the use of the word "interdependence" implying dependence in both directions is perhaps somewhat misleading.

Finally the concept of common control is also interpreted as limited to cases where it can be shown that there is a "common irreducible minimum group" of shareholders for companies to be regarded as associated. Thus where two or more shareholders control two companies they might normally be regarded as associated companies. However, if one shareholder can control one of the companies alone and not the other then it cannot be said that the minimum irreducible group of 1 is the same for both companies. Hence, they would not normally be regarded as associated companies for the purposes of corporation tax unless there were other indicators of control such as the controlling individual in the first company having a large loan outstanding from the other company or something similar which gives him effective control over the fortunes of the second company.

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Other year end planning considerations.

In dealing with the shift to this new regime it will be important for companies, particularly those in the owner-managed sector to consider whether or not there are any planning or structural issues that will be relevant.

- *Review shareholdings*
- *Review Level of profits*
- *Review if companies are necessary.*
    - *Dormancy? Carrying on any business?*

- *Inter-company charges/interest?*
- *Are alternative structures possible?*
- *Are small companies still tax effective?*

Section 2 – Some Recent Tax Case Decisions

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The nature of consultancy or similar services provided on a cross-border basis, especially in the post-Brexit era continues to present particular difficulties for business operating online, especially in the field of vat.

The Gray V Farrar case served to illustrate just how complex these issues can be and decide that matchmaking services were essentially offering "introductions" which could net be considered to be within the scope of the definition of "consultancy services.

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Coller V HMRC is a recent case dealing with the UK's rather unique tax "domicile" regime which is generally a matter of UK common law rather than specific tax law; although of course a non-domiciled individual resident in the UK may still be able to utilise the favourable "remittance" basis of UK taxation in respect of their overseas income until they have been resident in the UK for 15 from 20 of the recent UK tax years.

In this case an individual born in the UK to foreign domiciled parents claimed to have an intention to leave the UK and live overseas and thereby have an overseas domicile, effectively acquired at birth by virtue of their parents' domicile status. However the court decided that a "vague possibility" that h tis might happen at some stage in the future was not enough and that there needed to be something much more substantive; i.e. a clearly settled intention to leave the UK for such a status to be claimable.

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The Fresh Consulting case concerned the definition of "statutory records for the purposes of HMRC's statutory powers to demand access to business information during a Compliance Check.

There is generally no right of appeal against a statutory notice to provide records where the records specified in the notice are statutory records. In this case the tribunal held that bank records were indeed within this definition in a case where the company, which had apparently not traded for some time and not field accounts with HMRC started to make furlough support claims during the pandemic.

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Once again the old question of what is confectionery or food for Vat purposes has come before the tax courts. In this case it was decided that marshmallows are a food item and so zero rated for Vat.

It does seem rather odd however that the particular location within a food store where the products are displayed for sale can to a significant extent determine their vat status and a cynic might even suggest that this could open the way for vat planning?

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Two cases were decided recently which dealt with the old question of when are dividends to be taxed on the shareholder, i.e. when are they actually received?

In the Jays case whilst dividends had been declared and credited to directors' loan accounts wit their company it was decided that the existence of a formal agreement that the dividends could not be draw until a dispute with the company's bankers had been settled was sufficient to prevent the dividends being taxed on the date they were credited and that they could only be taxed from the date the dispute with the bank was settled.

Somewhat similarly although perhaps less clear cut the dividends voted for two brothers in the Gould case were to be taxed on two different dates although they were declared at the same time. The end result was that one brother was taxed on their dividends in a later tax year than the other because the tribunal decided that until the date the second brother took his dividend the documentation and other evidence showed that there was no "enforceable" right to the dividend.

Both these cases illustrate just how important the provision of clear and emphatic documentary evidence is when presenting such arguments before the tribunals.

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The Tavendale case involved Scottish Stamp Duty on land transactions and dealt with a taxpayer's claim for a refund of the additional charge which is imposed when someone buys a second residence. The claimant argued that they had sold their second property within the statutory period because there had been a formal exchange of letters between the parties' solicitors which represented a legally binding agreement for the sale of the property. The tribunal decided, Perhaps unsurprisingly, that this could not in law constitute the completion of a sale under Scot's property law.

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Sexton V HMRC is an interesting development in the interpretation of the law on SDLT and gardens and dealt with the not uncommon situation where garden and grounds of a property may sometimes be separated physically from the residence, i.e. they are not "contiguous".

The case concerned the appropriate type of SDLT to apply to a transaction where the garden for a flat was a communal one separated from the flat itself and the tribunal decided that in this particular case there was not enough of a physical connection or link with the flat for the garden to be considered part of the residence.

Whilst the two taxes are of course completely separate in law this does rather cast a shadow over the HMRC's long-standing acceptance for Capital Gains Tax Main Residence Relief that gardens or ground of an individual's main residence do not necessarily need to be physically next to or contiguous with the residence, for example it is quite common in some parts of the UK to see gardens across a road running in front of a house.

Slide 23

Many UK businesses have had to seek financial redress from the bankers as the result of mis selling of interest rate swap debt instruments in recent years. Generally any compensation received for this miss-selling has been regarded by HMRC as a taxable receipt of the business as "standing in the shoes" of their lost profits.

However in the Hexagon case a large debt to a bank was written off after a settlement was reached for partial repayment of just over 20% of the total. The tribunal held in this case that the release or write off of the remainder, which result in a credit to the businesses profits and loss account, could be regarded as a non-taxable receipt representing compensation for mis-selling and that this was not an actual cash receipt and so could be differentiated from other taxable forms of compensation received by other businesses.

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The Gunfleet case is a recent decision which casts an interesting light on what may be treated as professional fees or "preliminaries" which can qualify for capital allowances in large infrastructure projects.

Historically HMRC has frequently shown itself reluctant to accept that such costs can be allocated to plant and machinery as part of the qualifying installation" costs which do of course qualify for capital allowances under UK statute generally.

The decision reached by the tribunal goes some way to suggesting that in fact the definition of such preliminaries as qualifying expenditures for capital allowances purposes may actually be significantly wider than the interpretation traditionally adopted by HMRC although of course each case will turn on its own facts and will require specialist advice.

Section 3 – Some General Update Points

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HMRC has traditionally carried out visits to business premises as part of its compliance function and sometimes it undertakes what might be described as clandestine or "secret shopper" visits to observe the way a business operates and potentially identify failure in record keeping.

In the Katpat case HMRC clearly formed the view that sales were not being properly recorded by this restaurant and thereafter conducted a business economics modelling exercise based on the records such as they were which suggested that the turnover was being significantly understated in the businesses' financial accounts.

However the tribunal whilst upholding the HMRC;' s overall position and agreeing that the some of the explanations given for the gaps in the businesses' records were perhaps "dubious" also reiterated the long-held view of tax tribunals that simply demonstrating that turnover might be understated alongside poor business records is to be regarded as insufficient justification for displacing a properly prepared set of business accounts unless there is additional specific evidence which suggest that the business owners have unexplained saving s or investments or personal expenditures which cannot be justified by reference to their declared income from the business or other known sources.

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Businesses looking to plan for the introduction of the new CT regime in the UK from April 2023 should perhaps also revisit earlier loss relief carry- back claims which might still be in time for revision with a view to obtaining 25% tax relief for a loss carried forward instead of only 19% for a carry back? Such cases are perhaps likely to be rare but it may be worthwhile in some instances?

Slide 28

Tax agents and accountants who deal with the affairs of small or medium sized business clients in some sectors of the economy will need to be aware going forward that their clients' tax affairs are potentially the subject of what are knows as new tax "conditionality" checks.

Local authorities which grant licenses to business es such as taxi operators have to review various issues before they can do so. New tax checks have now been introduced which should normally happen without the business being aware of them but where these checks are failed, perhaps because the taxpayer's affairs are not completely up to date, this can have a significantly deleterious effect and impact of their ability to continue in business and may bring new pressure on a tax agent to get matters up to date quickly.

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A company purchase of own shares has been a well-trodden path to retirement for elderly shareholders in family companies, especially where perhaps the younger generation of the businesses owners cannot afford to purchase their shares but where a company has significant cash reserves accrued over previous years. It offers a route to a capital gains tax treatment on what would otherwise be income distributions which the availability of business asset disposal relief may offer a significantly lower level of taxation provided all the qualifying conditions are met.

However, in some cases the company may only be able to pay out the shares sales proceeds over a deferred period and whilst in the past this has sometimes been possible by using a “staged completions” strategy involved a contract for an up-front sale with staged payments on each subsequent completion it would appear that HMRC has recently begun to challenge such strategies. This therefore is a reminder that where such a purchase of own shares is being contemplated, particularly in these circumstances, it will always be advisable to utilise the statutory clearance mechanism to seek the reassurance that can be obtained by presenting all the facts and details of what is being proposed to HMRC in advance before any actual transactions are undertaken.

Slides 30 – 34

Various new online reporting obligations and facilities are now available and, in some cases, obligatory: -

- Online CGT reporting – within 60 days from completion
- EIS and SEIS share subscription Compliance Statements
- Payrolling for benefits in kind
- The economic crime levy.

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The dreadful experiences of those individuals and business owners caught up in the Post Office accounting “problems” in recent years are to be addressed, at least to some extent, by the payment to them of financial compensation. Government ahs agreed that the two main settlement schemes are to be regarded as free of tax on receipt.

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Capital Gains Tax Main Residence Relief is to be subject to some revision to alleviate the potential for unforeseen tax liabilities where married couples or civil partners separate, and their former marital home is part of their settlement for their overall financial arrangements.

- Where one spouse has left the former home relief will in future still be available when they dispose of their interest in the property to someone other than their formed spouse.
- Similarly the relief will also still be available to a spouse who has left the property where they receive part of the sales proceeds of their former home if

their former spouse remains in the property as their main residence, again even if their interest is sold to someone other than their former spouse/civil partner.

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Tax agents and accountants dealing with farming clients will probably find this case of interest when reviewing the rather odd “5 year” loss relief rule which has been in force for may years. The case confirmed that there can still be an escape from the impact of these rules where the farmer can shown that there is some realistic prospect of the business turning a profit in the medium, term future but that otherwise where there is no such evidence then the loss claim will fail.

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Off-Payroll Working and IR35 today?

Since April 2021 the existing “IR35” rules for freelancers have been extended to the Private Sector in the UK. This means that all organisations with in these rules now have consider their application and whether or not they have to deduct tax and account for NIC’s in respect of payments made to freelancers operating via “personal Service Companies.

So it is necessary to consider: -

- Is an individual providing “personal services” to a customer?
    - Via an intermediary?
- Is the end user “small” or not?

The rules apply to: -

- Medium and large companies in the private sector.
    - Companies Acts definition.
        - Turnover above £10.2 million
        - Balance sheet total above £5.1 million
        - Not more than 50 employees
    - “Small Companies” below these thresholds do not have to operate the “Off-Payroll Working” IR35 rules.

All ***qualifying companies*** now have to consider whether or not their PSC users are potentially within the IR 35 rules..

- The onus is placed firmly on the “End-User” from April 2021

- If they form the opinion that they ***are*** then the companies must operate the IR35 rules instead of the PSC
    - This means deducting tax and NIC’s from all payments to the PSC.

The statute for IR35 is found in Chapter 10 of Part 2 ITEPA 2003:-

the circumstances are such that—

- (i) *if the services were provided under a contract directly between the client and the worker, the worker would be regarded for income tax purposes as an employee of the client or the holder of an office under the client, or*
- *(ii) the worker is an office-holder who holds that office under the client and the services relate to the office.*

This means that Where an individual provides personal services to a customer through a PSC , AND if they did not use the PSC ***they would be an employee of the customer a***s regards the specific earnings/income from that customer.

Then the new rules will now apply. Under the old rules where IR35 applied to an engagement the PSC had to operate PAYE and NIC's against all salary and dividend.

So: - it is necessary to consider in detail for every PSC subcontractor, supplier, consultant, freelance worker etc…… ***What is the real nature of the working relationship between them and the End-User/customer?***

- ***Are they genuinely Employed or Self-employed?***

Slides 39 – 41

New Compliance obligations and HMRC activities.

- HMRC continues to beef up its compliance activities is specific fields: -
- Transfer Pricing
- #Uncertain tax treatments
- Issue of "nudge" letters to certain businesses and individuals

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Whilst most small businesses and SME's that practitioners deal with will be eligible for the smaller entities exemption from the UK's transfer pricing regime it is always important to be aware that TP can apply to them if they are part of a larger group as a subsidiary company in some circumstances. Similarly it is important to remember that TP can apply between individuals and companies in some cases and that TP is not just about transactions across international boundaries and can apply to companies in the UK dealing with other UK entities.

Whilst the HMRC has a relatively small team of individuals who police our TP legislation they raise significant amounts in compliance yield and only small adjustments to transfer prices can bring significant extra money to the UK exchequer.

Given the propensity for client to consider the potential benefit of inter-company charges and financial arrangements it is, perhaps unfortunately, almost inevitable that we will see an increased scrutiny of such matters once the new CT regime is in operation from April 1st 2023.

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For the largest of entities operating in the UK a new requirement has been introduced for them to notify HMRC about matters in their accounts and tax returns where these include something which will come withing the definition of an “uncertain tax treatment”.

Again this may not just affect large businesses but may also have an impact on smaller subsidiaries of large groups. Clearly any company that has adopted a potential contentious interpretation of tax statute or is dealing with a complex issue which may be open to different interpretations between HMRC and the tax advisers is going to need to be cognisant of these new rules and the need to make a proper disclosure.

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The use of so-called “nudge letters” continues to be a feature of HMRC’s current approach to tax compliance across a wide range of different areas. Such letters are seen by HMRC as a means of encouraging good compliance and also potentially identifying cases where there is the potential for lost revenue to arise.

Anyone receiving such a letter must deal with it carefully and give it the appropriate amount of attention; such letters should certainly not be ignored and whilst at the moment they carry no statutory force, i.e. they are not technically the commencement of a formal “compliance Check” by HMRC they clearly have the potential to lead to this. Ignoring such a letter is probably not a good idea and specific advice ought to be taken before the reply is sent in. Specifically considerable care will need to be taken before any formal statements and/or signed statements are sent to HMRC in response to such letters in order to ensure that false or misleading statements are not provided to HMRC.

Section 4 – Family Investment companies

Slides 42-45

The family investment company may offer some individuals Inheritance tax and also potential capital gains tax planning opportunities particular when considering Staged transition of ownership to the younger generation.

There can however be specific valuation issues whenever such transfers of shares are considered especially where the company owns valuable rent5al property assets. Other advantages may also accrue such as: -

- Better relief for the costs of borrowings inside a company rather then restricted 20% income tax relief outside.
- A lower overall rate of taxation on company profits as compared to income tax.
- Better perception of retention of control by the owners of the investments

The additional potential compliance costs should always be weighed carefully against the above potential advantages.

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FIC's have become popular in recent years among some advisers and are frequently propounded as a useful and more flexible means of offering clients more flexible inheritance tax planning for rental property and other forms of passive investments. Whether or not these advantages are real or illusory is a matter of some debate.

Such corporate vehicles do certainly offer some specific advantages, especially where the annual profits are significant, such as the relatively lower rate of 19%/25% corporation tax on net profits rather than potentially 40% or even 45% income tax if the assets are retained individual hands. But these advantages really only accrue where the owners of the assets do not really need the income themselves and are prepared to let it accrue within the company perhaps for withdrawal at a later date thus deferring the overall timing of the tax liabilities.

Using a company may bring greater flexibility in ability to pass on shares in the valuable assets to a younger generation in controlled stages whilst also perhaps offering a measure of protection for those assets within the corporate structure. Additionally the use of different classes of shareholdings amongst family members may facilitate better and differential sharing out of dividend income amongst family members; although her the potential impact of the UK's "settlements" provisions of dealing with what HMRC might perceive as tax avoidance will always need to be taken into account.

Currently individual owners of rental property in the UK suffer a significant restriction of tax relief in respect of any interest they pay on borrowings obtained to purchase rental property. One specific advantage of FIC's is that this restriction does not operate against companies so that full tax relief will be normally obtained on any interest on such borrowings.

It should be noted however that the advent of the new CT regime from 1st April 2023 brings with it the return of the old system under which a pure investment company will always suffer the highest 25% rate of CT in the UK now although there is an exemption for businesses owning commercially let rental properties.

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The main advantage usually put forward of the FIC is that it potentially offers a means of achieving medium to longer term Inheritance tax savings because it facilitates staged transfers of shares, and thereby shares in the assets owned by the company, on to the younger generation in a controlled manner and whilst at the same time enabling the older generation to retain significant company control over these assets, by means usually of them retaining the controlling shareholding and voting rights int eh company. Smaller tranches of assets can be transferred in stages until it is desired to transfer total control at some later stage perhaps?

Such smaller transfers can also of course provide access to the use of the individual shareholder's annual capital gain s exemption. Such gifts will normally be potentially exempt transfers for IHT so the transferor will need to survive the seven year period, and of course if such gifts were made by the individual there would be no hold-over relief as there will not be against gifts of shares; so ensuring that such transfers are indeed within the annual CGT exemption will be essential unless the transferor is content to suffer modest CGT liabilities when such transfer as re made

To set against this perception will be the inevitable cost of preparing company valuations whenever a share transfer is made. Gifts of shares in an investment business will normally be calculated by reference to the net value of the underlying assets and liabilities owned by the company in the fist instance and this will need to be carried out professionally by qualified property and share valuers in normal circumstances.

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Of course the precise method of valuation to be adopted for an investment company will be a matter for the professional valuer to determine in discussion with their client and whilst this may not present to much difficulty, especially where the investments are in quoted stocks and shares, there can be some complications.

This will almost certainly be the case when minority shareholdings are to be the subject of such gifts on a regular basis when the question of whether or not a discount to reflect the minority holding can be appropriate in such circumstances will arise.

Some professionals will argue that such discounts may not be appropriate where the value of the company is essentially to be determined by the value of its underlying assets and that therefore purely simple percentage valuations ought to be adopted; others will take a different view and so it will always be important to ensure that whatever basis of value is eventually adopted it can be fully supported in the event that HMR decides to scrutinise the CGT calculations done on the basis of such values.

Section 5 – Business Asset Disposal Relief

Slides 46-52

BADR, (Formerly Entrepreneurs Relief) represents the most significant capital gains tax relief for the business owner even in its currently much reduced form of offering only £1 million of relief for gains over an individuals lifetime.

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There are a number of major considerations to take into account when considering the potential availability of problems with claims for BADR, (formerly Entrepreneurs Relief).

The conditions for obtaining the relief are relatively straight forward but it is important to recognise that HMRC does look closely to ensure that there has indeed been full compliance with these rules.

Most of the tax tribunal cases that have been decided in connection with BADR and ER have centred around compliance with the detailed conditions and have demonstrated clearly that where there are even what might be perceived as marginal or inadvertent breaches of the rules HMRC may well challenge an individual's entitlement to this relief.

All the conditions must be met for the full 24 month period right up to the date of the actual disposal. There have been several cases for example where individuals have resigned early as an employee or director or have inadvertently reduced their shareholding below the 5% required minimum before a sale thus leading to them failing the conditions and not obtaining the relief.

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One of the difficult aspects of BADR/ER is that when it was introduced in 2008 the legislation was drafted in a hurry to replace Taper Relief which was its immediate predecessor. To achieve this the draftsman seems to have gone back to the older Retirement Relief statute abolished in 1998 and reintroduced with it almost by a cut and paste approach some of ill-worded and awkward features of that older relief.

This resulted in a relief which lost many of the more relaxed and flexible features of the taper relief and reintroduced some complications and pitfalls for the individual that were inherent in Retirement Relief.

Specifically there are restrictions when rents have been paid for personally owned property and also apportionments have to be made when a property has been only partially used during the period of ownership for trading purposes or where only part of it has been used for trading purposes.

Most problematically the statute requires that there be a disposal of the whole or a part of the trading business and this is interpreted by HMRC as not covering simple assets sales but a recognisable "business" entity which has an income stream attached and can be identified as a recognisable business segment or entity in its own right.

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Particular problem areas which will need close attention will be:-

Will there be:

- A "business disposal?
- A part business disposal, or
- A mere asset disposal?

Is the individual withdrawing from the business:

- A sale or gift of shares?
- A sale of a partnership interest
- A sale of a sole tradership?

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Will the individual meet the qualifying tests?

- 5% of the shares
- Trading company
- An employee?
- Carrying on the business as an individual or partner?
- Twelve months ownership tests

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Associated disposals.

- After the business ceased
- Or simultaneously?
- Within the three-year period?

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Trustee & Liquidation disposals?

- Is there a qualifying beneficiary?
- Was the trust trading?
- How many beneficiaries? Do they all qualify?

Losses

- What assets will incur losses?
- Are they all business assets?
- Are they associated disposals?
- Are there non business losses?

Rents for privately owned assets?

- How long paid for?
- Can/should it be curtailed?

Are all gains going to qualify?

- Below the maximum threshold (now £1million)
- All qualifying shares or assets?
- All qualifying individuals?

Section 6 – Year-End Tax Planning

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Attention should be paid to the following: -

Income tax Slides 55- 56

- Personal and professional expense claims
- Pension contributions
- Savings income opportunities
- ISA contributions
- Pensions for children?
- Timing of bonuses and benefits

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In my experience it is often the basic reliefs and exemptions which are overlooked by individuals when dealing with their personal year -end tax planning issues, especially when completing their personal self-assessment tax returns or where they are an employee dealt with via the PAYE system.

It can be surprising how much a modest tax claim for personal expenses can make to the individual's overall annual tax liability.

The use of a form P87 remains a fairly straightforward means for an individual to submit a standalone tax expense claim for items such as uniform cleaning and laundry or one of the other fixed rate expense claims that are available to specific employments.

Similarly claims for professional fees and expenses can often lead to appreciable reductions in annual tax liabilities and these can of course be submitted for the previous four tax years if such claims have been overlooked.

Once thing often overlooked is that it is actually possible for the employee to make claims for capital allowances on plant and equipment items, (not a car), which their employer requires them to the fund themselves where it is included in their contract of employment.

With the advent of the increased annual allowance for pension contributions and coupled with the continuation of the ability to roll forward unused contributions limits from the previous three years an essential part of income tax planning will continue to be the making of pensions contributions as far as possible and wherever practicable. Such contributions can of course also act to reduce an individual's taxable earnings across thresholds for other charges such as the High Income Child Benefit Charge in particular cases and may also reduce the effective rate of a capital gains tax charge in some cases.

Company director shareholders with significant credit balances on a director's loan account might also consider the payment to themselves of a commercial rat of interest on such balances. Such interest carries no Nic liability and may not suffer income tax if the individual has unused savings tax bands and the interest will of course carry a CT deduction for the paying company which after 1st April 2023 might conceivably be at 25%.

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Close attention should always be paid to the practical feasibility of maximising savings to such tax favoured vehicles as ISA's where any interest income can be rolled-up tax free within such "wrappers". Whilst the advent of the UK's complex savings income regime has perhaps diminished the enthusiasm of some financial advisers for these tax favoured products they should probably be regarded as still providing one part of the overall portfolio of effective investments for the individual.

It should also not be overlooked perhaps that the Stakeholder Pension rules facilitate the making of pension contributions by the younger generation, even where they have no income, and the addition of the relief provided by government can mean that this may in suitable cases and with appropriate investment advice, be a useful means of saving a significant sum whilst the child is a minor. This might conceivably be combined with the ability of grandparents to make annual IHT free gifts to their grandchildren?

The timing of bonuses to employees at or around the end of an accounting period and/or tax years is always important so as to ensure that both the tax deduction for the business and the tax liability on the individual recipient are timed appropriately.

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Close attention to the payment of items that may act to reduce an individual's income below certain critical tax thresholds can often pay dividends around the end of a tax year as well. Pensions payments which reduce an individuals income below the £50,000 threshold may mean that Child Benefit is retained. A similar effect may be obtained with the payment of charitable donations.

These reducer effects can also be useful if the individual wishes to limit the impact of the tapering effect on their personal annual tax allowance if their is income is rising above the £100,000 threshold as well.

Capital Gains Tax

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Always consider making optimum use of:-

- **Basic exemption and reliefs**
- **Ownership of assets between spouses?**
- **BADR and ownership of assets**
- **Pension contributions to reduce overall rates of tax?**

Every individual has an annual CGT exemption, which is to be heavily curtailed over the coming two tax years so it will be more important than ever to ensure that this is used wherever possible to minimise overall future tax liabilities.

Where the individual has a share portfolio or similar managed investments it is still possible, with careful advise, to use the annual exemption against modest disposals made from such investments and to use up to date versions of the old "Bed and breakfast" stratagem provided careful and specific tax advice is provided. Disposals can perhaps be matched with repurchases by a spouse or inside an ISA and at the appropriate time?

Given the significant scaling back of Business Asset Disposal Relief recently it is now more important than ever to ensure that business assets and shares in trading companies are owned by the right people amongst the members of a family.

Reorganising the share ownership structure to optimise the eventual availability of this valuable relief is likely to be even more important in the future.

Inheritance Tax

Slide 58

It will always be important to review:

- All the fundamental reliefs and basic exemptions
- Optimise use of the lifetime thresholds
- Don't overlock "expenditures out of income" £ relief
- Review ownership of **assets and estates.**

All individuals have access to certain small but important annual reliefs and exemptions which should be utilised on a yearly basis wherever feasible.

Whilst alone they do not offer major IHT savings when combined over the medium term they can make appreciable inroads to modest estates' IHT liabilities.

In particular wherever an event is taking place such as the marriage of a child consideration should be given to using the exemptions that are available.
Transfers between spouses or civil partners remain exempt in the UK for IHT purposes and should be considered as part of a couple's overall IHT strategy.

The use of Discretionary Trusts can represent a means of passing assets on to the next generation in a staged and controlled manner and offer the donor a useful means of retaining control to some extent over those gifted assets whilst removing them eventually from their IHT estate. Such trusts do of course potentially carry ten year anniversary charges to IHT and potentially also exit charges when assets are taken out of such trusts but the judicious use of CGT hold-over relief can be a useful means of deferring such CGT liabilities over the medium term.

Finally the use of the “normal expenditure out of income” relief can also offer the wealthier individual a means of keeping their overall taxable IHT estate down to a manageable level especially as such gifts do not accumulate as potentially exempt transfer at all.

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In particular, but without prejudice to the generality of the comments included above and below in this disclaimer, delegates are cautioned that the comments made in these notes about possible tax planning strategies may be regarded as potentially controversial and may be subject to challenge by HMRC

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