

Hobsons : Newsletter December 2011

Tax News

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Our newsletter this month contains the following articles: a short summary of the tax changes disclosed by the recent Autumn Review; planning opportunities available to married couples with investment property; tax position regarding claims for interest on property loans; and finally a few notes on tax relief available for Christmas parties...

Our next newsletter will be published 12 January 2012.

Summary of Autumn State

There were few surprises in the announcements made on 29 November. We have listed below a few of the more topical issues:

- Small Business Rate Relief to be extended for a further six months from 1 October 2011.
- Public transport in London and regulated rail fares will benefit from a reduction in fare increases next year. From 1 January 2012 fares will increase by 6.2% not the expected 8.2%.
- The expected increase of 3.02p per litre in the cost of fuel due 1 January 2012 is deferred to 1 August 2012. The further rise due in August is scrapped.
- Bank Levy to be increased.
- A new relief announced that will extend the Enterprise Investment Scheme to small, new business start-ups. To be called the Seed Enterprise Investment Scheme. 50% tax relief for individuals investing and the offer of a capital gains tax holiday.
- Capital gains tax annual exemption frozen for 2012-13 at £10,600.
- New 100% Capital Allowance for firms trading in six assisted areas: the Black Country, Humber, Liverpool, North East, Sheffield and Tees Valley.
- State Pension increases confirmed from April 2012: the full basic pension will rise by £5.30 to £107.45 per week; the full couple rate where entitlement is based on their spouse's or civil partner's pension will rise by £8.50 to £171.85 per week.
- State Pension age to rise to age 67 in 2026.
- From the end of the current pay freeze, average public sector pay increases will be limited to 1% for a further two years.

Joint ownership of let property

Property, as with most assets, can be owned by individuals, jointly with other parties in partnership, or by a limited liability company or a trust.

In most cases the taxation of rental income derived from letting a property is straightforward. Individuals holding property in their own name or in partnership, companies and trusts all pay tax on the net income received.

The position of jointly owned property can vary and in particular that owned by married couples or registered civil partners who are living together.

Property owned and let by married couples or civil partners (who are living together)

- HMRC will divide rental profits equally between spouses (civil partners), 50:50.
- This division of rental income may not reflect the underlying ownership. For example property may be owned 10% by one spouse and 90% by the other.
- If spouses/partners want the rental income split between them in accordance with the beneficial ownership they must make a formal election to HMRC. Once made the election cannot be revoked or changed, unless the underlying beneficial interest changes.
- Interestingly, the above rules do not apply to property held in a business partnership or to property that is let as a furnished holiday let.
- Property owned jointly by persons not married or in a civil partnership.

In this case the rental income will always be allocated between the joint owners in proportion to the underlying beneficial ownership.

Married couples and civil partners usually have a choice therefore, to split the rental income equally if this produces a lower joint tax liability or, split the rental income in the same proportion as their ownership of the property.

Interesting deduction

You may find the notes that follow useful if you raise money by increasing the lending/mortgage in respect of rental property.

The following factors need to be taken into account:

Loan used in property business

Generally speaking if the funds raised from refinancing are reinvested in the property business, for example to purchase new property or refurbish existing property, then any loan interest payable is allowed in full.

Funds withdrawn by property business owners (individuals and partnerships)

If funds are raised to enable the owners to withdraw money from the property business the following considerations need to be taken into account.

1. HMRC will seek to disallow interest on any loan in excess of the original cost of the property, or, the valuation of the property when first taken into business use. For example you may own a property that has been your own home for a number of years that you purchased for £100,000. You decide to move abroad and keep the property but let it out; the current value is £200,000. It would be possible to raise a buy to let loan for up to £200,000 (if the banks were willing!) and claim interest on the loan against your rental income.
2. A claim can only be made for the interest on the loan not the capital element repaid.
3. There are many pitfalls that can result in a loss of tax relief so it is important to obtain advice before refinancing.

Loans taken out by a property business run by a limited company

Where a property is owned by a limited company any additional cash raised by increasing loans secured on the company's business property belongs to the company. If directors wanted to withdraw the funds for personal purposes they would need to observe the usual rules:

1. Vote a dividend
2. Take extra salary or bonuses
3. Reduce the amount of any loans they have made to the company.

What seems on the surface a simple issue, 'Can I borrow against business property and get full tax relief on the interest charged', is far from a simple issue. Please get in touch prior to taking out such a loan to clarify the tax position, especially if you are relying on a tax deduction to make commercial sense of the loan.

Party time...

At this time of the year business owners and their employees are wont to celebrate. The article that follows explains how to organise a well deserved works party this Christmas and make the most of the tax reliefs available.

The cost of a staff party or other annual entertainment is allowed as a deduction for tax purposes. Also, as long as the criteria below are followed, there will be no taxable benefit charged to employees:

- The event must be open to all employees at a particular location.
- The cost is only tax deductible for employees and their guests (which would include directors in the case of a company) but not sole traders and business partners in the case of unincorporated organisations.
- An annual Christmas party or other annual events offered to staff generally is not taxable on those attending provided that the average cost per head of the functions does not exceed £150 p.a. The guests of staff attending are included in the head count when computing the cost per head attending.

- All costs must be taken into account, including the costs of transport to and from the event or accommodation provided, and VAT. The total cost of the event is merely divided by the number attending to find the average cost. If the limit is exceeded then individual members of staff will be taxable on their average cost, plus the cost for any guests they were permitted to bring. No deduction will be allowed for the £150 exemption.
- VAT input tax can be recovered on staff entertaining expenditure. If the guests of staff are also invited to the event the input tax has to be apportioned, as the VAT applicable to non-staff is not recoverable. However, if non-staff attendees pay a reasonable contribution to the event, all the VAT can be reclaimed and of course output tax should be accounted for on the amount of the contribution.

If these limits are breached employers can pick up the tax cost by using a PAYE settlement agreement.

A final note on 'Trivial' gifts for employees.

Employers may find the following Revenue concession useful - we have copied the note directly from the HMRC handbook:

"An employer may provide employees with a seasonal gift, such as a turkey, an ordinary bottle of wine or a box of chocolates at Christmas. All of these gifts are considered to be trivial and as such are not taxable. For an employer with a large number of employees the total cost of providing a gift to each employee may be considerable, but where the gift to each employee is a trivial benefit, this principle applies regardless of the total cost to the employer and the number of employees concerned."

One final cautionary note regarding VAT and staff gifts, VAT is chargeable by the employer when an employee receives gifts totalling more than £50 in a year. Turkeys however, are zero rated for VAT purposes!

Merry Christmas!

DISCLAIMER - PLEASE NOTE: The ideas shared with you in this newsletter are intended to inform rather than advise. Taxpayers circumstances do vary and if you feel that tax strategies we have outlined may be beneficial it is important that you contact us before implementation. If you do or do not take action as a result of reading this newsletter, before receiving our written endorsement, we will accept no responsibility for any financial loss incurred.

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