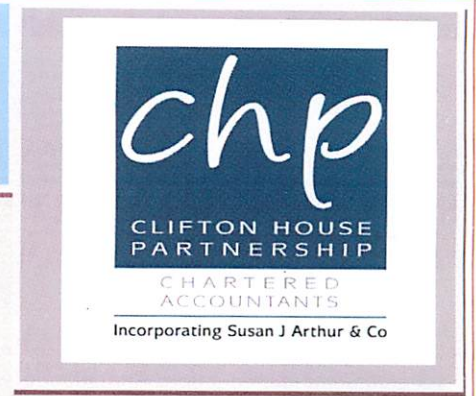


# TAX E-NEWS

Monthly Update – September 2010



Welcome to our monthly tax newsletter designed to keep you informed of the latest tax issues.

We hope you enjoy reading the newsletter and remember, we are here to help you so please contact us if you need further information on any of the topics covered.

## MORE NEWS ON PENSION CONTRIBUTIONS TAX RELIEF

We mentioned that changes are afoot in the last two editions of our Tax E-News, and more information is now available.

Specifically, consideration is being given to abolishing the previously announced rules whereby from 6 April 2011 those with income of at least £150,000 in the tax year concerned, suffer a loss of some or all of the higher rate tax relief otherwise available.

The aim is to raise at least the same amount of revenue (£3.5 billion annually), however, and this may be achieved by drastically reducing the annual allowance to in the region of £30,000 to £45,000. Clearly, therefore, this will impact on many people.

A Discussion Document raised a number of issues, including the possibility of capping tax relief at 40% and what should be the appropriate level of the lifetime allowance which currently stands at £1.8 million and may well be reduced. We will have to wait to see what transpires, but clearly there are to be some severe restrictions applying from 6 April 2011.

## OFFICE OF TAX SIMPLIFICATION

This was recently launched and there are genuine high hopes of this initiative serving to create a simpler tax system.

The Chancellor has initially asked the OTS to take forward two reviews, which cover tax reliefs and small business tax simplification (including IR35), with details as follows:

- ◆ OTS has been commissioned to review a list of all reliefs, allowances and exemptions within the taxes and duties administered by HMRC and identify those reliefs that should be repealed or simplified to support the Government's objective for a simpler tax system. The Government is particularly interested in identifying reliefs that are largely historic, not frequently used, create distortions in the tax system or are complex for business or HMRC to administer. OTS has been asked to produce an interim report by late Autumn 2010 and a final report with recommendations to the Chancellor ahead of Budget 2011.
- ◆ OTS will provide an initial report to the Chancellor by Budget 2011 that identifies areas of the tax system that cause the most day-to-day complexity and uncertainty for small businesses and recommends priority areas for simplification. Once the Government has considered the initial report the OTS will be asked to produce specific recommendations on tax simplification for small businesses. As part of the initial report, OTS will also explore alternative legislative approaches to IR35.

We will make sure that we take full advantage on your behalf of any tax simplification proposals coming from these 2 reviews. If you have any suggestions on tax simplification (polite ones naturally!) please send them to us and we can pass them on to the OTS at the appropriate time as a complete submission from this firm by reference to real life issues identified by us and our clients.

## TAX RELIEF ON EMPLOYMENT EXPENSES

It has long been the case that unfairness rules when it comes to deciding whether expenses you incur as an employee are tax deductible. You have to meet a very stringent test – namely that the expense has to be incurred wholly, exclusively and necessarily in the performance of your duties.

There have been many tax cases on this very issue over the years, with HMRC winning most of them as they often argue that the particular expense may help you in your employment but it is not actually incurred in the performance of your duties. They also often argue that there is a dual purpose to the expenditure which serves to debar tax relief. That is a constant source of frustration, particularly as in many instances if the employer met the cost of the expenditure concerned, the legislation may well say that you are not taxable on it. Meet the cost yourself and there is no tax relief – in other words there is no symmetry in the tax treatment.

A recent decision in the Court of Appeal now gives some hope to employees. There were specific circumstances, as to be expected, with the taxpayer (Dr Bannerjee) being employed in the NHS exclusively in a training post involving attending to patients on the ward and attending the compulsory training that was part of her obligations to her employer. On that basis it was held that there was no duality of purpose in incurring the costs of training courses and she was entitled to tax relief.

We will see if we can apply this decision in other instances where an employee has to meet various costs because the employer does not for whatever reason.

## HMRC REQUESTS FOR ACCESS TO PRIVATE BANK ACCOUNTS

If you have ever been subject to a business tax enquiry by HMRC, you may well recall that one of their common tactics is to ask to see not just the business bank account statements but also your private account statements.

That has long been a bone of contention, and this will only get worse now given the removal from HMRC's Compliance Handbook of previous assurances that private bank statements will not be requested as a matter of course in the opening enquiry letter.

We will always try to take the initiative away from HMRC in the event of a tax enquiry, and will resist any unreasonable request to see your private bank statements. If you have no concerns in passing them to HMRC we will make it clear to them that although we do not consider they are entitled to see the statements, you have instructed us to send them in because you wish to co-operate fully. That is likely to score points with HMRC but at the same time they will realise that they cannot ride roughshod over us by asking for whatever they wish!

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## ENTREPRENEURS' RELIEF ODDITIES

As you know, there was a dramatic increase in the limit of this valuable relief which now goes to £5 million of lifetime gains instead of the previous £2 million (when this relief was introduced the limit was £1 million). As it serves to reduce the CGT rate to 10% it is even more important to make sure that a business disposal qualifies if at all possible. The alternative is paying CGT at the new rate of 28% (18% if a basic rate taxpayer, but for that purpose the gain is added to income, so it is unlikely to help).

But there is a bolt out of the blue for some people, where the previous tax rules have changed. This is where the CGT on a gain of any type is deferred by way of an investment in an Enterprise Investment Scheme (EIS) type of company, or you sell shares in a business in exchange for loan notes in the purchaser company.

The way that entrepreneurs' relief works when a chargeable gain is deferred via an EIS investment has changed where the deferred gain arose from 23 June 2010. It gives you a choice – either (a) claim entrepreneurs' relief if available and pay CGT at 10% but make no deferral claim; or (b) do not claim entrepreneurs' relief but claim EIS deferral and then when the deferred gain comes into charge it is taxed at 28%.

The new rules mean careful consideration of your options is essential. There are odd transitional rules in place where the deferred gain arose before 23 June 2010.

## FURNISHED HOLIDAY LETS

Another topic we have covered before, but where actual proposals are now out in the open. Specifically, the advantageous tax regime is only likely to apply from 6 April 2011 if the property in the EEA is available to let for at least 210 days (30 weeks) in the tax year and is actually let for at least 105 days (15 weeks). The latter requirement may well be fine for a property in France, Spain or Portugal, but you could struggle to let a property in the UK for that number of weeks given the vagaries of our climate.

We will be pleased to discuss this with you, and in doing so we will be mindful of the possibility that even if your lettings pattern falls short of the likely new rules, we may be able to argue that given the level and extent of the services you provide to the holidaymakers, the lettings are a trade in the normal meaning of that magical word. Then, the advantageous tax regime will still apply whatever the number of days that the property is let.

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Please contact a member of our Tax Team if you would like to discuss any of the issues raised.