

LEGAL ALERT

PRIVATE CAPITAL BULLETIN

Rollits
SOLICITORS

ONE YEAR OVER, ANOTHER ABOUT TO BEGIN!

For many of us 31 January 2005 marked the end of thinking about the tax year 2003/04. Tax returns to 5 April 2004 had to be submitted by that date and tax payments made by then. So another year out of the way - hopefully!

Now is the time to start thinking about the current tax year 2004/05. The year is not yet over, so you needn't worry about submitting your tax return! But there is a lot that you ought to think about between now and 5 April 2005 to make full use of the tax allowances available to you for the year.

Examples relating to capital taxes would include the following:

- Making full use of the annual exempt gifts exemption for inheritance tax purposes - £3,000 per donor per year - plus last year's £3,000 if unused.
- Making full use of the individual small gifts exemption for inheritance tax purposes - £250 per donee per year.
- Making full use of the annual capital gains tax exemption - £8,200 per year (for each spouse).
- For those who have significant capital gains, considering the acquisition of "Enterprise Incentive" or "Venture Capital Trust" investments to postpone - and often significantly reduce - the capital gains tax liability.

- For those who are considering significant gifts to charity, it might be possible to obtain income tax relief for 2004/05 should the gift be made prior to 5 April 2005 - more on this below.

One new matter to consider this year is the 'Pre Owned Assets Charge', which comes into effect on 6 April 2005 and which will have to be included on self-assessment returns for 2005/06. As is often the case these days, the tax charge was designed to catch 'intricate' tax planning schemes but has been written in such a way that many other 'innocent' transactions may be caught as well. If you could be caught, then consider taking action prior to 5 April 2005. More on this overleaf.

Remember that all these opportunities are lost - or restricted - if not utilised by 5 April 2005. Even if you decide to do nothing, then at least consider the position.



INCOME TAX RELIEF ON GIFTS TO CHARITY

Most people will be aware of gift aid but there is another very valuable but not so well known relief available to those of you who are considering gifts to charity.

An individual can give quoted securities or land and buildings to a charity. The market value of the assets given away can be set against income for income tax purposes. There is no restriction on the amount, except that it must not exceed the individual's taxable income for the year.

Further, the gift is free of inheritance tax and capital gains tax.

So, if you want to help a particular charity by giving it say £50,000 this year, it might be better to give it quoted shares/land and buildings rather than cash. For example, if you hold 5,000 shares in XYZ plc, which are worth £10 each now, but cost you £2 each some years ago, then:

- You would obtain income tax relief on £50,000 - at your top rate (say 40%).
- You would have no inheritance tax liability on the amount given away.
- You would have no capital gains tax liability on the disposal of the shares.
- The charity can sell them immediately, if it wishes, free of capital gains tax.

Much better than selling the shares, realising the cash, paying tax and then giving the cash away!

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PRE OWNED ASSETS CHARGE

SPECIALIST TAX CONSULTANT JOINS ROLLITS PRIVATE CAPITAL TEAM



PRE OWNED ASSETS CHARGE

Much has been written about this tax - and most of it not very pleasant.

It was introduced by the Chancellor in his Budget in March 2004 as a way of catching the sophisticated inheritance tax planning schemes which allowed individuals to give away their houses, whilst reserving the right to continue to live in them rent free. Tax legislation was regularly introduced to counteract particular schemes, only for further loopholes to be found, further legislation brought in and so on.

The intention of the Chancellor was to stop this 'merry go round' once and for all. He did so by introducing an income tax charge on the benefit from such property (which includes chattels and other assets as well as buildings) from 6 April 2005

The 'charge' is now law, having been included, after much heated Parliamentary debate, in the Finance Act 2004 - although changes are expected before it comes into effect. Exactly what those changes will be is very much in doubt.

How does it work? Could you be caught?

Suppose your son (or daughter) was getting married and looking for a house. He and his wife found a house they liked, but could not afford it. So you decided to help them buy the house. It cost £300,000 and you gave them £150,000 cash. The gift was with 'no strings attached' and the house was registered in their name - not yours. No problem at this stage. You never lived in that house, other than occasional visits etc.

In the last year or so, however, your health has gradually deteriorated. Your son and your daughter in law have a spare room and ask you to come to live with them. No question of charging any rent. You jump at the chance.

Their house is now worth £500,000 with the heavy increase in house prices in recent years.

Are you caught by the 'Pre Owned Assets charge?'. The immediate answer is 'yes' - you are living in a house and you contributed to the cost.

So how much is the tax charge? If we assume the market rental of the house is £30,000 per year, then for 2005/06 onwards, you will have an income tax charge on half of £30,000 (as you contributed half the cost) i.e. £6,000 tax per year for a 40% taxpayer. Just to add salt to the wound, you have to work all this out yourself and put it on your tax return to 5 April 2006 and later years otherwise, you might be liable to interest and penalties!

There is no charge if the benefit is £5,000 or less per year. If it is more than £5,000, then the whole amount is taxed - not just the excess over £5,000.

There are various reliefs - one of which is that the move into the house is the result of 'unforeseen circumstances'. An accident is unforeseen - but old age isn't! We can all foresee that we will be a day older tomorrow than we are today. Will the Revenue take such a hard line? We must wait and see!

The thing to do at the moment is to examine your circumstances and see if you could be caught by this legislation. If you are, what can be done about it? One useful method is to treat the gift as a 'gift with reservation' - and as such part of your estate for inheritance tax purposes. This might be better than incurring an annual tax charge. This needs an election to be made in writing - you have until 31 January 2007 to do so, but the sooner it is made the better.

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Alan Hart

Rollits has reinforced its commitment to delivering the best private client legal advice with the senior appointment of Alan Hart as its first specialist tax consultant.

Alan joins Rollits from Pricewaterhouse Coopers LLP, where he had been a partner since the early 1980s. Although latterly based in London, Alan spent the vast majority of his career as a tax partner in PwC's Hull office. He was responsible for a

wide range of personal and corporate tax issues, particularly in the area of tax planning.

John Lane Head of Private Capital at Rollits comments:

"Tax planning is a crucial part of managing an individual's affairs, as evidenced by the increasing number of people being drawn into the inheritance tax net, often unnecessarily. Alan is very well known in the region. He has an excellent reputation in the area. Rollits' expertise and Alan's tax experience complement each other perfectly for the benefit of our clients."

INFORMATION

**If you have any queries on any matters detailed in this bulletin please contact:
John Lane or Caroline Hedges on 01904 625790**

This bulletin is for the use of clients and will be supplied to others on request. It is for general guidance only. It provides useful information in a concise form.

Action should not be taken without obtaining specific advice.

We hope you have found this bulletin useful. If, however, you do not wish

to receive further mailings from us, please write to

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The law is stated as at 1 March 2005

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