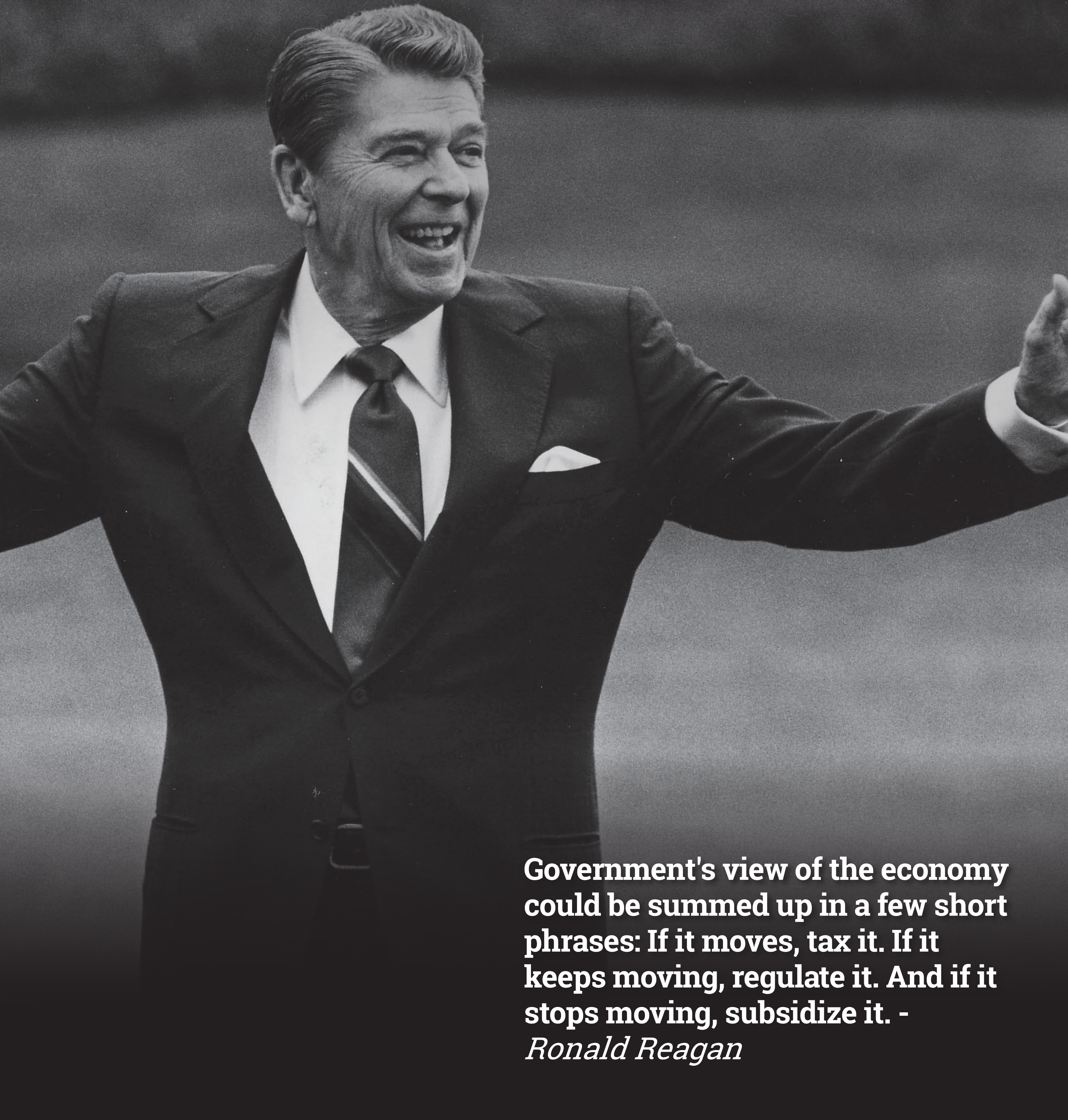
The Schmidt Tax Report

Tax, Money & Property

October 2017



Government's view of the economy could be summed up in a few short phrases: If it moves, tax it. If it keeps moving, regulate it. And if it stops moving, subsidize it. - *Ronald Reagan*

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Tax

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Tax

News

HMRC writes off millions of pounds

HMRC has been forced to write off tens of thousands of self-assessment fines that were incorrectly applied in the first case. In the worst instances people with no tax liability whatsoever were caught up in the system and penalised for no reason. In HMRC's latest accounts it said it had written off £23 million relating to nearly 25,000 cases where people had not filed self-assessment returns for at least three years. It said the move followed an analysis of whether the taxpayers needed to be in self-assessment in the first place.

Drop in alcohol tax revenue

There has been a dramatic drop in the total amount of tax raised from the sale of alcohol. Although wine's share of alcohol duty has tripled from 13 to nearly 40%, beer's share has fallen from 39 to 32% and the share relating to spirits dropped from 48 to 30%. The reason revenue rates are falling is that in real terms the rate of duty is little more than half what it was in 1979, when the total tax take from alcohol sales was double what it was last year. However, in percentage terms the UK is still one of the most heavily taxed in Europe with duty and VAT accounting for 77% of the cost of a bottle of spirits and 56% of the cost of a bottle of wine. Lower alcohol consumption rates have also contributed to the fall.

No more tax returns for 2m people

HMRC has begun to write to taxpayers who it believes do not have any tax liability, or whose liability is not very high, offering to use data it already holds to calculate the tax they owe. The initiative is part of HMRC's commitment to abolish the annual tax return. On one hand, some tax advisers feel that the changes could help taxpayers, particularly pensioners, who are ill served by the PAYE system. On the other hand, other tax advisers feel that there is a huge danger that HMRC will get it wrong and that taxpayers will not bother to check the figures being used.

HMRC promises new approach to business

HMRC is consulting on a new business risk review model, to tailor its categories more closely to the compliance issues faced by large businesses. The revised review would support HMRC in maintaining a shift in large business compliance behaviours and provide greater clarity and confidence for large businesses.

R & D tax relief claims rise

HMRC has announced that there has been a 19% year-on-year increase in the number of claims for research and development (R & D) tax credits submitted by companies. Total claims rose to £2.9 billion, an increase of £470 million from the previous year.

Forget the Post Office

From the 15th December 2017, it will no longer be possible to make tax payments at a post office.

Trust register deadline

A reminder that the trust registration service is up and running (it replaces the *41G* paper form which was withdrawn at the end of April 2017). All new trusts with a tax consequence need to be registered by the 5th October 2017. Those already operating must provide additional information by the 31st January 2018. As a concession, HMRC has confirmed it will not penalise anyone as long as they register by the 5th December.

Google Tax raises £281m

The diverted profits tax (DPT) revenue (also known as the Google Tax) collected by HMRC in 2016/17 totalled £281 million, leaping from £31 million collected in the previous year, according to data released by the government. Introduced in April 2015, DPT aims to discourage multi-national companies using aggressive tax-planning structures to divert taxes from the UK.

HMRC loses to Sports Direct

The upper tribunal court has upheld the ruling in favour of Sports Direct and against HMRC's position that the retail company owed millions in EU VAT. Typically, companies selling goods to EU customers would have to adhere to the VAT rate of the buyer's country. VAT varies across the EU: the 20% rate in Britain is around average with 27% for Hungary, 25% for Denmark but only 17% for Luxembourg. Sports Direct found a way to circumvent paying varying amounts of VAT by setting up a separate delivery company, Etail Services Limited, which operated outside of its VAT group.

Editor's Notes

To horse

Yachts, super cars, horses, watches, antiques… when it comes to expensive, luxury items, HMRC is always suspicious of any arrangement that could possibly be 'disguised remuneration' or, in plain English, a try on. It is almost impossible to persuade the taxman, or, indeed, the courts, that, for example, it is vital to your business that you rent a holiday villa to hold a conference or sponsor a showjumper for advertising purposes. And yet, and yet. If you set up a genuine business that deals in or – perhaps – rents out expensive, luxury items then, of course, acquiring those items is a perfectly justifiable business expense and, ahem, incidental use of said items is probably not going to come to anyone's attention.

I ran a wedding car business for many years using my classic car collection (Bentleys and Jaguars). Moreover, as cars are a wasting asset it was tax write-offs all the way. True, I had to advertise the business and employ drivers and pay the extra insurance. On the other hand, I was able to drive beautiful cars and achieve a very healthy tax benefit at the same time. In this day and age, if one was so minded, one could set up a business dealing in or renting out almost anything – even designer handbags. As long as it is a genuine business, and one can prove it, HMRC hasn't a leg to stand on.

Which brings me to the subject of horses and the taxman. One area where a great number of people would like their hobbies to be more tax efficient is that of riding. Recently, there was a very interesting case regarding this in which HMRC denied a Mrs Vigne business property relief (BPR) on her livery business. Happily, the First-tier Tribunal disagreed.

Livery is a complicated matter because there are so many different services one can offer. More or less, it falls into four categories, being (1) full livery, complete care for the horse; (2) part livery, the provider does most of the caring and the owner some of it; (3) DIY livery, all the work is done by the owner but in the provider's stables; and (4) grass livery, suitable grazing land is supplied. The courts view each of these activities in a different light. Simply providing grass or DIY livery is the same as being a landlord, namely it is an investment and no BPR is available. Whereas, if you are providing full livery, although the land is necessary to the business (in the same way that it is necessary to have land if you want to build a shopping centre) investment in property is not the main business activity.

Mrs Vigne's case was complicated. She was providing what might be described as DIY livery plus. She provided quite a few services and looked after the horses overnight if there was a problem. But it was by no means a five-star service.

The key point with this and other cases where land is involved is that it is important that lots of services are provided. For example, if you are running a caravan park you virtually have to offer a hotel service to qualify for BPR. I know that one should never let the tax tail wag the business dog, but BPR is an extremely worthwhile relief to have. It is worth the bother of arranging your enterprise so as to be able to claim it.

The consolation of loss

"Every experience is a lesson, every loss is a gain," or so says the spiritual leader Sri Sathya Sai Baba. What is true of life is also true of tax. There are a hundred ways in which loss can benefit a taxpayer.

Most commonly, of course, entrepreneurs can utilise their losses to reduce their past, present and future tax bills. A company or a sole trader can set off a loss against total profits in the period it makes the loss or the loss can be carried back and set off against the total profits of the previous 12 months. Unclaimed trading losses can be automatically carried forward to future years and may be set off against the first available trading profits of the same trade. And if a company ceases to trade and makes a trading loss in its final 12 months, it can avail itself of terminal loss relief. Relief can be used against profits on income and, in some instances, from capital gains. Incidentally, a sole trader can claim early trade loss relief. Also, if a sole trader incurs a loss in one of the first four tax years of carrying on a trade, the loss can be carried back to the previous three tax years.

When I was a much younger man, it was legally possible for one business to buy a second, loss-making business and use those losses to reduce its own tax liability.

For many years, this has been almost, but not completely, impossible. However, if you own two businesses, one loss-making and one profitable, carrying out more or less the same activities, it is certainly possible to unofficially divert sales from one to another. For example, imagine that you own two advertising agencies, one with huge carried-forward losses and one making massive profits. There is nothing to stop you, informally, sending customers of the profitable business to the loss-making business. Which definitely proves Sri Sathya Sai Baba's point.

Finally, there is what might be called the ultimate solution. While HMRC inspectors will definitely express an interest in any enterprise involved in shenanigans – especially if it smacks of evasion – on the whole once a business closes down, they give it much less of their attention. I am not saying they won't look at a director's historic expenses claims, but it is of much less interest to them if the company is no longer trading. So, loss, at its most extreme, and if used proactively, can definitely serve a purpose. Surgeons, after all, are not the only people who can bury their mistakes. So can entrepreneurs.

More powers for HMRC

Last month, the Criminal Finance's Act came into force, which, the Serious Fraud Office (SFO) hopes, will do for tax evasion what the Bribery Act did for corruption.

The purpose of the Criminal Finance's Act is to make companies liable for failing to prevent their employees from facilitating tax evasion. Crucially, it removes the need to prove that there was a 'directing mind' leading the activity.

The SFO will now be pushing for further legislation to encompass fraud, theft, false accounting and concealing the proceeds of crime.

What the SFO wants is to make sure that companies suffer where there has been some element of criminality. This is because it is so difficult to prove that such activities are known about or approved by the board or senior management.

The Criminal Finance's Act comes at a time when HMRC is being pushed by politicians to increase the number of criminal prosecutions for tax evasion. Indeed, whereas there were just 499 dawn raids by HMRC in 2010, the number increased to 1,563 dawn raids in 2016. Over the same period there has been a fivefold increase in the number of criminal prosecutions for tax evasion.

In addition to extensive new legislation HMRC has, of course, also been given substantial extra funding.

Is it all working? Is HMRC really managing to stop tax evasion? Its own figures suggest that the latest tax gap is some £36 billion a year, of which £11.4 billion relates to illegal tax evasion and the hidden economy. Until now, HMRC has put most of its efforts into preventing and tackling what it considers artificial tax avoidance. Now there is the sense it intends to refocus its efforts on those involved in criminal tax evasion.

Talking to HMRC representatives, journalists have reported a new, tougher stance. HMRC's attitude appears to be that during the last few years taxpayers have been warned that changes were afoot and, moreover, there have been various disclosure facilities made available to them allowing them to put their tax affairs in order at a relatively low cost and without criminal prosecution. Now, it seems, HMRC plans to get tough.

Given the current mood and strategy, it isn't surprising that HMRC cooperated so completely with a recent Channel 4 documentary, *Catching the Tax Dodgers*, which made for disturbing and somewhat sensationalist viewing. It featured HMRC inspectors at their coldest and most ruthless and it was difficult not to feel sympathetic for the poor souls that had fallen into their net. Still, although it made me uncomfortable, the programme was well worth viewing as it offered some fascinating and intriguing insights into the way HMRC operates.

Catching the Tax Dodgers focused on three different case histories. The first was very straightforward and involved an Italian businessman accused of excise fraud. The second case also involved unpaid VAT, although it was difficult not to feel sorry for the taxpayer concerned, who seemed to be more of a fool than a knave. The third case involved a banking executive who came forward to admit that he had filtered untaxed monies into a Swiss bank account.

The documentary also gave us a quick glimpse of an HMRC inspector looking at a computer screen in order to link up financial information for a particular taxpayer. This was real 1984 stuff in which the taxman decided that the taxpayer's lifestyle was not commensurate with income being returned under self-assessment.

The interesting thing about HMRC is that it receives, more or less, £3.8bn in government funding and is about to receive £1.3bn extra. Most of its work is administrative. After all, it is employers, businesses, entrepreneurs, the self-employed and, of course, their professional staff and advisers who do the real work when it comes to tax collecting. Meanwhile, the central government makes a £9bn or so contribution to funding the police – a sum that has been cut by 25% in recent years.

Of course, tax evasion is a crime. But watching the documentary I found it difficult not to feel that HMRC was getting a little above itself. There was an attitude that all taxpayers are criminals or would be if not terrified of the consequences of getting caught. I was appalled by HMRC's desire to strike fear into the hearts of every taxpayer.

Accommodation provided by reason of employment

A quick reminder that sometimes the provision of living accommodation to an individual employee of a limited company can be a worthwhile and tax-efficient perk. There are three situations where this benefit can be taken advantage of:

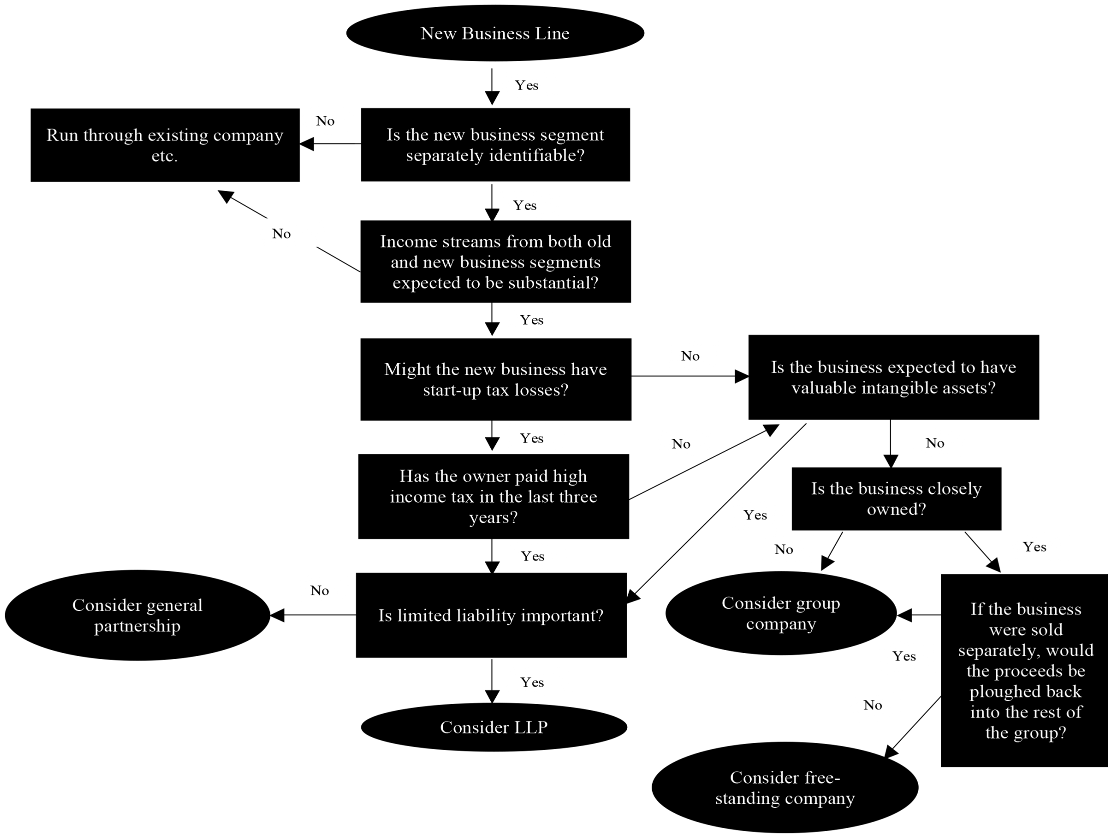
- First, where the accommodation is necessary for proper performance of an employee's duties, such as full-time farm workers who have to be available outside normal hours.
- Second, where accommodation is provided for better performance of the employee's duties such as a priest looking after a parish.
- And, third, where there is a special threat to the employee's security and the accommodation has to do with their safety. Into this latter category might come someone involved in controversial scientific research.

Such a benefit may not be taken advantage of if you are a director of a company and own more than 5% of its equity. However, you can own more than 5% of the company's equity providing you are not a director. One area where such a benefit is rarely challenged by HMRC is that of living accommodation provided to farmers and farm workers. So, if you own an agricultural property it is well worth considering whether your living accommodation cannot be provided in this tax-efficient manner.

The Business Column

Branching out in business

This month, I'll be looking at the situation where a person carrying on a business has a new idea for a profitable line. As the structure of your business can make a huge difference to how much tax you pay, now and in the future, I looked to provide a tool for answering the question: "How should I structure this new business line?" In the hope that this is useful, I've drawn a flowchart of the decision (See over page)



Of course, I've got to festoon this pretty picture with caveats about taking proper professional advice in individual cases, this being only a guide, etc., etc.; but I think the diagram does highlight most of the important questions and principles involved in deciding how to structure a new business segment. So, if you're sitting comfortably, I'll begin.

A separately identifiable segment

The first question to ask is whether the new business idea is sufficiently different from the old to make it a clearly separable business. It should go without saying that we are also assuming that this new business segment can be expected to produce a reasonable profit, even if not for some time in the future. Otherwise, you might as well just continue to use your current business structure (limited company or otherwise) and run your new line through this.

Perhaps the main lesson of this piece, however, is that, if you're likely to have substantial profits both from the new idea and from your existing business, you should definitely be considering whether to domicile the new business idea in a new business vehicle.

Start-up losses?

The reason for putting this question so high in the decision process should be clear to anyone who has read the chapter on losses in my book, *The Entrepreneur's Tax Guide*. If you just go ahead and domicile the new business segment in your existing limited company or whatever, the effect will be that any start-up losses (which can include tax losses created by accelerated capital allowances) will simply be pooled with the profits from the existing business line. By contrast if it were possible to put the losses in a limited-liability partnership (LLP) or a partnership, there is the possibility of generating losses which can accrue to individuals personally for tax purposes, thus giving the ability, subject to the usual constraints and conditions, to offset those losses against the individual's income, going back up to three years. Where tax has been paid at high rates in previous years, this could therefore give rise to a much greater effective tax advantage than pooling the start-up losses with the existing business's profits.

Intangible value

Another reason for considering separately identifying, and domiciling, a new business line in a special-purpose entity is the possibility that this business will acquire an intangible value. This might be merely the goodwill that most profitable businesses establish over a period of years. Or it could be more specific intangible assets like patents, know-how and the benefit of lucrative contracts. Separating out the intangible assets in this way, in a new LLP for example, can pay huge tax-planning dividends later on, when the value can be treated as effectively owned by the individual business owner rather than by a limited company. This is too big a situation to deal with as part of a general structuring article, but trust me when I say that establishing separate ownership of assets in this way, to the benefit of an individual, can be very good tax planning indeed!

General partnership or LLP?

The main difference between a general partnership and an LLP is not related to tax, in fact. In most ways they are taxed in exactly the same way, and the difference is that an LLP gives the partners limited liability, akin to that which you get from running a business through a limited company. Therefore, any liability of a business which can't be imputed to the direct personal negligence of an individual partner will, as a worst case, die with the LLP, and not give rise to personal liabilities on the part of the partners.

One way in which limited liability can be important is in the ability to take on individuals, who would baulk at being faced with unlimited liability, as effective partners in the business. As partners they would be self-employed, and there is a very specific financial advantage in this as against employing them as managers or directors of a company. This is that the National Insurance (NI) regime related to their earnings is much friendlier with a self-employed person. In particular, the employer's NI levy of 13.8% doesn't apply to self-employed partners' earnings.

Structuring for eventual sale

Although you might think it premature to consider tax-efficient sale strategies at the point at which you are only just setting the business up, it isn't at all premature in reality; indeed, it can be too late once the new business segment has acquired its own value.

Here's the basic dilemma, and the reason the relevant question box in the flowchart is worded the way it is. If you have decided that the new business should be run through the medium of a limited company, perhaps because there are no start-up losses and no likely valuable intangible assets building up, you've got another decision to make: should this new company be in a group structure with the existing company (e.g. a subsidiary or fellow subsidiary of an overall holding company) or should it be a free-standing company, whose shares are owned by the individual shareholders of the parent business direct?

If you hold freestanding companies, any sale of an individual company would give rise to a capital gain which was directly taxable on the individuals, and, with care to meet the qualifying criteria, these sales can qualify for capital gains tax (CGT) entrepreneur's relief. So the proceeds from selling this individual business segment (we are assuming that the purchaser only wants this, and not the rest of the business) can be available post 10% tax only in the hands of the individual shareholders. Generally speaking, this is a very satisfactory result.

By contrast, if you are talking about a trading group, and a holding company of that trading group selling the subsidiary's shares, the tax impact is, on first sight, even more favourable. That is, if you meet the 'substantial shareholdings exemption' criteria, which in a 100% holding situation you most probably will, there is actually no tax at all payable by the holding company on the gain it makes. However, the sting in the tail is that, if you want to take out the proceeds to spend personally, you've then got to either wind up the holding company (which may not be feasible if it is a continuing entity) or pay out the proceeds as a dividend. Payment of the proceeds as a dividend will almost certainly give a much higher tax liability than you would have paid under entrepreneur's relief if you had held, and sold, the target company as a free stander.

You could sum it up by saying that making it a group company is better if you are likely to utilise the proceeds within the group after selling the subsidiary; because you would be utilising the full proceeds with no tax at the company level. If, however, you were likely to want to spend the proceeds personally, it would be better for you to cough up the 10% as the price of doing this and then bank the rest.

So, there you have it: a whistle-stop tour through the potentially complex decision of how to structure a new business line. If you get stuck, or the whole thing is beyond you and your adviser, I am on the end of a telephone or email!

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Could You Register As A Personal Service Company?

Life is very unfair. Those who run their own businesses, whether purely as freelance service providers or in a more substantial way, have almost all the opportunities that are out there in our tax system for reducing annual liabilities. Mind you, they also have all the headaches and worry, red tape, etc. inseparable from running a business in this country.

But what about the workers? By that lapidary phrase, I am referring to the 'wage slaves' whose tax is all taken off them before they get their salary, under the PAYE system. Is the tax-planning book a closed one to them?

In the old days, you'd have opened that book at a very exciting chapter by setting them up as a personal service company (or PSC). So, instead of passively receiving a payslip with heavy tax and NI deductions each week or month, they'd be invoicing their 'employer' through a specially set up limited company.

This is where the real tax-planning fun begins. Quite apart from claiming all the company-related expenses against tax, you've also got the ability to mitigate the tax exposure in all kinds of ways, including:

- the ability to restrict your tax rate on income to the corporation tax rate (currently 19%) rather than the income tax rate (currently a top rate of 45%);
- the ability to put two fingers up to the whole NI system, because your 'employer' has no employer's NI to pay, and you can take the income out of the company in non NICable form, like dividends;
- the ability to spread the income round other family members, for example by giving your spouse shares;
- the ability to defer paying income tax on the company profits indefinitely, for example by investing surplus profits within the company rather than taking them out as personal income and then investing them personally.

And various other benefits of using a company to receive ongoing income. How wonderful it would be if we still lived in the good old days, when you could set up a PSC and get all these benefits. You can't do that any more, of course.

Or can you?

The big enemy is IR35. Mindful of all the tax, and particularly NI, that the Exchequer was losing out on because of the increasingly widespread practice of workers using PSCs, this legislation was brought in in the year 2000, and where it applies, the company's income is subjected to PAYE and NI deductions effectively, ultimately, as if it had been received directly by the main man as salary or wages. It's because of IR35 that a lot of people are under the impression that the practice of using PSCs is now dead.

Since the introduction of these rules in 2000, the Revenue has tightened up on them in significant ways on two further occasions.

1. From 6th April 2013, anyone who is a director or officer of the 'client' company is within IR35 (unless the two companies are under common control); and
2. From this year, the burden of paying the IR35 tax shifts to the paying 'client' body, where that is a government-controlled entity.

Number 1 means that the practice of high-flying business people, who are directors of a number of companies, billing those companies through their own PSC has basically been outlawed. Number 2 has had, it seems, the predictable effect of making all public bodies apply IR35 regardless of the facts and circumstances. So, doctors at NHS hospitals, for example, who actually don't resemble employees at all, are having to battle the decisions of their local NHS trust to slap PAYE and NI on their company's income.

OK, but even with these two major restrictions to planning using PSCs, there is still a huge amount of room to manoeuvre for everybody else.

The fact is that IR35 was an immense disappointment to HMRC when it was introduced. This is because it depends on the very difficult test of whether a person would be employed or self-employed if you ignored the intermediary company. So, you take a hypothetical situation where Mr Worker, billing through Worker Limited to Client Limited, is receiving his income direct, as some kind of individual freelancer, rather than through the company. "Would that be treated as employment income?" is the question which IR35 makes us ask.

What helps the taxpayer here is the fact that the case law (which is almost all the law there is) determining whether a person is employed or self-employed is not only complex but also antiquated. It's really based on old-fashioned concepts of a 'master and servant' relationship which actually applies far less these days, with today's much freer practices.

Because the rules are so complicated, moreover, it's very labour intensive for HMRC to attempt to enforce them. An investigation into quite a small-scale situation can go on for months or even years with no real prospect of a good outcome from the taxman's point of view. No wonder he keeps coming back to the IR35 legislation for another bash!

So, the flipside to this, looking at the situation from our more accustomed viewpoint, that of the taxpayer, is that it's still very much open season for saving tax using PSCs, in the ways discussed earlier on in this article. Good luck, and good hunting!

Feature: A Chamber Of Horrors

On a quick 'back of envelope' basis recently, we counted no fewer than 19 different taxes – or rather, groups of taxes – the government uses to separate us from our hard-earned pennies. If we've missed any, no doubt our postbag will be full of letters from readers, making the number 20 or more! It goes without saying that both the number of taxes and the amount of money raised through the tax system have increased exponentially in comparatively recent times, when you consider the nice simple tax life our forebears, for example in the Victorian period, enjoyed. We thought it would be interesting, and useful, just to give a very quick thumbnail sketch of each tax here; and, because this is a magazine devoted to the citizen's fightback against excessive and unfair taxation, give just a few very brief hints as to how the burden of each tax can be reduced – when it can. This list is in no particular order, although it does begin with the big granddaddy of them all.

1. Income tax

First introduced at the end of the 18th century to raise money to fight the Napoleonic wars, this tax seems to have been with us, with only short breaks, ever since. Beware of politicians suggesting or implying that an increase in tax is in any way temporary to fund a specific project: once they've got the tax in place, they almost never abolish or reduce it! Income tax is the government's biggest earner, and you can see that it would be entirely impractical to suggest abolishing it. But you can reduce it in various ways where you are in any sense in control of your income – for example if you run a limited company and can decide when, and how much, income to take out of it. Because each year has its own scale of allowances and lower tax rates, spreading any income you are in control of between tax years, and between members of your family or household, can significantly reduce your overall income tax burden. So can running a business that makes losses – perhaps start-up losses – which can be carried across and offset against your other income, subject to limits.

2. Capital gains tax (CGT)

In a way the epitome of a socialist tax, this was introduced by Mr Wilson and Mr Healey's government in 1965. When you make a profit from selling a fixed asset of various kinds, this profit isn't income, and so, with certain specific exceptions, the profit wasn't taxed before 1965. CGT applies mainly to sales of shares, properties and business assets like goodwill, and specifically doesn't apply to most debts, or to cars. Generally speaking, you will pay 20% tax on most gains, but with 28% being payable on gains from selling residential property. The key to CGT planning is spreading gains round the family, again, but more particularly making use of the various reliefs that are on offer. Entrepreneur's relief, which applies to sales of trading businesses, and – in some circumstances only, watch out for this – the sale of assets used for the purposes of a trade, reduces the tax rate to 10%. Main residence relief is also a very valuable relief indeed, and can apply to any property which, at any time in your period of ownership, has been your main residence.

3. Corporation tax (CT)

For some reason this seems to be the most talked about and controversial tax of them all, at the moment. It was introduced in the same Finance Act as CGT, in 1965, and was basically just a sort of 'tidying up' exercise to ensure that companies' tax affairs were dealt with on a unified basis, including both income and capital gains. Corporation tax avoidance is what is particularly in the news at the moment. To do this you need to have a very clever accountant and, generally speaking, be one of the 'big boys': the risks and paraphernalia of mainstream CT avoidance are not normally attractive to the smaller company. The main point to make is that corporation tax is at a very much lower rate than income tax, and therefore a lot of owner-managed business tax planning consists in paying CT on your profits – rather than income tax. The fun then begins in getting the money out of the company without paying income tax after all!

4. 'Loans to participators' tax

Although this is provided for in the Corporation Tax Act, this is actually a separate tax on its own. When a company which is controlled by five or fewer people lends money to one of its shareholders, or an associate of the shareholder, the company has to pay 32.5% of the amount of the loan to the Revenue. If the loan is repaid or released, this tax is repaid. Loans to Participators Tax, unlike CT, can be the lesser of two evils, because if the company paid a dividend to the shareholder instead, this may bear tax at rates of as high as 38.1% – and this is paid by the individual and not by the company, which makes it effectively a much higher rate still in comparison to the 32.5% loans to participators tax.

5. National Insurance (NI)

Don't believe anybody who tells you this isn't a tax. The original idea, no doubt, was to fund benefits using amounts paid by the contributor and by his employer on his behalf. However, there's very little real pretence that this is still the case, or that there is some kind of magic insurance 'pot' somewhere. The government just spends it, and indeed has probably spent all of our NI contributions for the next 50 years already! So much so that it has had to impose a second layer of compulsory 'pension' contributions on employers, with the 'workplace pension'. At least this goes to a third party and not the government! The best ways of reducing NI are to become self-employed, or to run a company which you take the income from in non-NI-able form, like dividends, rent or interest on directors' loans.

6. Gambling duties

These are not duties of the same kind as excise duties, which are indirect taxes. Gambling duties are a direct tax, being a levy on the profits of those who run bingo, online lotteries and so on. This is payable on top of the business's corporation/income tax dues.

7. Inheritance tax (IHT)

Whilst almost all taxes are effectively a tax on business, this may just be an exception. Chargeable these days at a flat rate of 40% on a person's estate over the nil band of £325,000 – the same for ten years despite soaring property price inflation – the most effective way of saving IHT is to make gifts to your nearest and dearest during your life and then take the precaution of surviving seven years afterwards. There is also some mileage, depending on the circumstances, in investing your wealth in relievable assets, in particular trading businesses.

8. VAT

As this is a creature of the European Union, will the government abolish VAT following Brexit? We don't think so, as it is one of the government's top five earners. VAT, in fact, which stands for value-added tax, heads our list of indirect taxes, which are chargeable not on profits or income but on money flows and assets. The rate has crept up inexorably from an original 8% to the current 20% rate. Generally, the imposition of VAT is pretty unavoidable, but there are some big advantages, and disadvantages, to be had in the area of property, where enormous care needs to be taken when dealing with any substantial property purchase or expenditure on conversion, rebuilding or renovation.

9. Excise duties

These apply to the import and other transactions in certain specific goods, mainly alcoholic drinks. Generally, the weaker the alcohol content of drinks, the lower the duty.

10. The annual tax on enveloped dwellings (ATED)

This is a new tax, a creation of Mr Osborne's tenure of Number 11 Downing Street. It's basically designed just to be a thorn in the side of those who hold a lot of property in an otherwise tax-efficient structure, because it applies, in the first instance, wherever a dwelling (house or flat, etc.) is held within a limited company or a partnership or LLP which includes a limited company as one of its members. The rate of tax is generally in the region of about three-quarters of 1% of the value of the property, and it applies to properties worth £500,000 or more. There are various 'reliefs' from the tax, which would otherwise be very wide-ranging indeed, but these have to be specifically claimed by way of a return – thus neatly increasing administrative burdens with no financial benefit to anyone. The reliefs apply where the envelope is holding properties for the purposes of a property development or a letting business. In other words, that really only leaves properties that are occupied by someone connected with the owner, or held for his or her occupation at some point on a non-business footing. A number of people have 'de-enveloped' their properties in order to avoid incurring this irritating financial and administrative impost.

11. Stamp duty

Most people are actually unlikely to come across stamp duty at all these days, now that properties aren't chargeable to it (see below). The most likely occurrence of a stamp duty liability is on buying shares in a company, where the rate of tax is half a per cent. So, gifts of shares don't trigger stamp duty, and, where a company is being acquired by another company in exchange for shares issued by that acquiring company, remember that you can and should discount the value of the shares issued if they are a minority interest in that acquiring company.

12. Stamp duty reserve tax

This is an even rarer beast, in practice, than stamp duty. It only applies to certain 'derivative' transactions involving assets that would otherwise have incurred stamp duty. Don't worry about this one unless you are into complex financial instruments.

13. Stamp duty land tax (SDLT)

This is the progeny of the stamp duty regime which has grown into a monster. It's now a significant revenue raiser, and instrument of social manipulation by the government. As most people know, it's payable by the purchaser when property (land and buildings) of any kind situated in the UK is bought. Except where the purchaser is a connected company, the duty, which can be rates as high as 15% these days, is chargeable on the actual consideration not the market value of the property. Special rules apply to the introduction of properties into partnerships and LLPs, and, if some at least of the partners are connected with the introducing person, very often the profit sharing arrangements of the partnership/LLP are set in a way which gives a low or no SDLT liability. The extra 3% is the current hot topic in SDLT, and this applies wherever somebody buys a residential property, and that purchaser already owns another residential property – unless the property being purchased is their main residence. Interestingly, the extra 3% doesn't, therefore, apply to buying a buy-to-let property if the purchaser doesn't own any other residential properties.

14. Council tax

The replacement to Mrs Thatcher's ill-fated poll tax, this is very like the old rates system, in fact, and your only scope for a reduction is if you can show that your property has been put in the wrong valuation 'band'.

15. Business rates

Here is another disincentive to businesses to employ people, because people need space, and space is heavily taxed on businesses. Better to outsource to India if you can!

16. Car tax

The best way to reduce or eliminate this imposition is to buy one of the new 'environmentally friendly' cars, which use electricity as their sole or partial motive power.

17. Insurance premium tax

As insurance isn't subject to VAT under European law, which is imposed on us in the UK, the government thought it would like to use this as a handle for screwing a bit more money out of us anyway, so they imposed insurance premium tax.

18. Air passenger duty

Again, annoyed that airlines pay no VAT (because tickets are zero rated under European law) the government saw this as an opportunity to raise a bit of revenue from what is essentially a captive market. The last we heard this was £12 per person, per departure.

19. Petroleum revenue tax

The oil industry is certainly a captive market, because you have to go where the oil is, including the North Sea. So, the government raises a substantial amount from the oil companies on top of the corporation tax they pay. It all goes on the price of a litre of petrol or diesel, of course.

Roger The Tax Dodger: Will He Get His Collar Felt?

Readers of *The Schmidt Tax Report* come to it from a variety of different angles. No doubt a copy finds its way to Somerset House, or some other HMRC establishment, where an individual is allocated to 'loophole watch'. Others have an abstract or indirect interest in tax-planning techniques, for example professionals like accountants, tax advisers and lawyers. Then there are the people who are looking for ideas to legally reduce their tax bill. Amongst these, statistically, it must also be the case that there are a few whose intention, or practice, is to save tax in ways which aren't legal.

A dangerous game

In a sense, any kind of action taken to reduce the amount you would otherwise have been paying the government is a dangerous game, because you're David taking on Goliath. If what you are doing is legal, generally speaking your worst case is that HMRC can successfully attack your planning and ask for the tax back. If tax inspectors think you haven't been as scrupulous as you should have been, they will also want penalties, and in any event any late-paid tax attracts an interest charge. But for those stepping over the borders of legality, the potential sanctions aren't just financial. There is also a potential threat to individual liberty in the form of criminal action.

Avoidance and evasion

There are hundreds of different words for the activity which seeks to reduce tax within the law: from the most pejorative word of the lot, which is 'avoidance', one moves, verbally but possibly not semantically, into 'planning' or 'mitigation', with 'sensible structuring' probably being the mildest term. On the other side of the dividing line, tax evasion is tax evasion, and it's illegal. Probably the best definition of 'evasion' is ways of reducing tax which involve telling lies.

The Revenue's response

The government and the Revenue, wilfully deceitful themselves, have been conducting a campaign for some years now to muddy the waters between avoidance and evasion, both of which give rise to a wholly mythical concept described as the 'tax gap'. This is meant to be the difference between the tax the government would get if people didn't indulge in 'avoidance and evasion' (bracketed together) and the amount they actually do get. But as there's no remotely acceptable definition of 'avoidance', as opposed to 'sensible planning', and as all kinds of business decisions are made for a variety of motives and not just with regards to tax, the impression of exactitude given by the sometimes quoted 'tax gap' figure is completely spurious. What are the ways in which HMRC is seeking to close this perceived tax gap?

Apart from changing the rules, which HMRC does frequently, individual action against taxpayers can be either civil or criminal, and this is where we are getting to the nub of what this article is about. It would be nice and neat, in a way, if HMRC acted against evaders under the criminal law code and avoiders under the civil law code. Nice in its neatness, maybe: but not nice at all for the target of the criminal action.

Good news

The good news is that HMRC's criminal proceedings are very rare indeed in practice. With much trumpeting, the Revenue has announced that it is increasing the number of individuals it prosecutes, but the targeted figure is still an absolutely tiny proportion of taxpayers as a whole, barely making it into four figures each year.

You are likely to be most in the danger area, as far as HMRC prosecution is concerned, if you fall into one of the following categories:

- accountant, particularly if you specialise in tax;
- lawyer, again specialising in tax;
- other financial professionals, like IFAs dealing in substantial amounts of money;
- a famous person.

It's absolutely clear that HMRC does target celebrities. The reason for this is obvious, of course: if a celebrity gets into trouble with the Tax Office, this is front-page news, which HMRC hopes will act as a deterrent to others.

The civil approach

But the good news, as we say, is that the vast majority of counter-evasion work by HMRC is done on a civil basis, where the individual is not going to get his collar felt, and is not going to be fined or sent to prison. Instead, the sanctions are purely financial, comprising the back tax, interest and penalties. Providing you come clean and don't sign a certificate which is declaring that you've now told them everything when you haven't, Revenue inspectors are usually quite content to go down the civil route. You may think this is nice of them. Actually, the reason is that the standard of proof in civil cases is much lower, so, if the matter ever came to the tribunal in a civil action by HMRC, they would only have to show on the 'balance of probabilities' that a given amount of extra tax, etc. is due. In a criminal case, they have to prove this 'beyond reasonable doubt'.

Also, where civil action is being taken and there is no prospect of criminal action, the taxpayer is unlikely to be advised, by his lawyer, to keep shtum. Therefore, everyone's life is likely to be easier this way.

The COP9 procedure

Where significant evasion is suspected, but the Revenue wants to go down the civil route (as inspectors do in most cases), a taxpayer will be offered the COP9 procedure, standing for *Code of Practice 9*, a Revenue booklet. Basically, COP9 is a deal between the taxman and the taxpayer under which the taxpayer promises to present a report with all of the arrears declared and quantified and the taxman promises not to prosecute. Deadlines for this procedure are now very tight, and if you miss it the taxman will, somewhat arbitrarily, refuse to give the formal COP9 protection. But providing you do declare everything, and finish off by certifying correctly that you've done so, you are effectively immune from prosecution. It may be (indeed usually is) a very expensive way of buying your liberty, but it is an effective one.

The unlucky few

A trained tax practitioner will very quickly be able to sense the difference between a case which the taxman is taking criminally and one which he is taking civilly. The signs of an intended criminal prosecution aren't exactly subtle, and include 'inviting' an individual to attend an interview under caution. When the taxman is feeling like a character in an American cop thriller, he'll also organise 'dawn raids' on your business and home premises, in a tell-tale hint that he feels all may not be well with your tax affairs.

What to do if the Revenue starts making alarming noises of this kind? The answer is unequivocal: get specialist legal assistance immediately. Don't attend any interviews under caution without having a lawyer there, and get straight on the phone to a lawyer if the taxman turns up at your premises with warrants or uniformed officers. The whole climate is different in this instance, and as a general rule we find that the legal advice is: be as uncooperative as you can manage at this stage. Don't think to divert the Revenue's wrath by adopting a conciliatory approach, because you will only be being treated like this because they have already decided that you are to be one of the unlucky few, and this decision is unlikely to peter out into a civil inquiry unless they are quickly convinced that they are barking up the wrong tree.

In short, if HMRC is considering prosecution, the situation has already gone over and above the one where an ordinary accountant or tax adviser can help you, although no doubt the criminal lawyer will bring a numbers man in to assist as appropriate at a subsequent stage of the investigation, if it continues.

And it's in those last three words that we can offer some crumb of comfort to any of the unlucky few who may be reading these words. In practice, a high proportion of embryonic criminal actions are stillborn, and almost invariably this will be because HMRC has not managed to get sufficient evidence to convince the Crown Prosecution Service that the case should be proceeded with. This is the reason why it's so important to have a criminal lawyer by your side before you say *anything* to the investigating Revenue officer. We're not talking about anything sneaky here, or frustrating the course of justice, merely about an individual's fundamental rights under the criminal law, which include the right not to incriminate himself.

Non-UK Residence: An Update

If anything in the UK tax system was ever simple, it's how residents and non-residents of the UK are treated differently. The basic rule (which is actually an almost universal rule of international taxation) is that a UK resident pays tax on his worldwide income and gains, whereas a non-UK resident only pays tax on his UK source income. Until very recently, with one very specific and easily avoidable exception, a non-UK resident didn't pay UK CGT at all: even on making gains from selling UK-sited assets. That rule has been modified rather recently, though, as we'll come on to see.

The changes, which have muddied these otherwise nice and clear waters, that we want to consider are:

- the trap laid for 'temporary non-residents', who leave the UK short term;
- the new CGT charge on UK residential property; and
- the new IHT charge on UK residential property in 'envelopes'.

The five-year rule

For very many years, there was a strong incentive in the rules to skip the country for a brief interval, make a big capital gain or pay a big dividend from your company, and then come back. Residence abroad for a period of as little as one year, which could be contrived by employing yourself in a non-resident company, meant that the capital gain and income concerned arose in a year when it wasn't taxable here.

The inevitable crackdown on this came, however, and a five-year rule has been introduced. Under this rule, if you are non-UK resident for less than five exact years, and receive the money while you are away, you pay the tax when you come back to this country. This doesn't apply just to capital gains from selling assets but also to dividends you receive from a company, unless those dividends are received out of the current profits of the company, made while you are non-resident.

UK residential property

One reason, one suspects, for the booming UK property market is the fact that non-residents can (or could) make tax-free profits. This was because of the rule stating a non-UK resident is not liable to CGT, even on UK-sited assets. Suspecting that this was one of the elements causing the UK property market, particularly the London market, to overheat, George Osborne imposed a tax – but only on residential property, not commercial property.

This tax applies from 6th April 2015, and what it means is that non-residents only pay CGT, on selling a UK residential property, based on the difference between what they get for it and its value on 6th April 2015. With the undoubted cooling of the property market, this could still currently be a very modest tax charge, for this reason. As soon as the next property boom comes along, however, non-residents will start to feel the pain. Perhaps one way of avoiding this issue is (if commercially sensible) to consider moving some at least of the UK property portfolio investment into commercial property.

The new inheritance tax rules

Although these aren't directly related to residence (because IHT is based on domicile, not residence), there is now a fairly strong link between the two concepts because an individual who would otherwise be a 'non-dom' becomes treated as domiciled here after 15 years' residence.

Until recently, a non-UK domiciliary had only to structure the ownership of UK residential property through an offshore envelope in order to turn it into IHT 'excluded property'. This is the reason so many properties in London, for example, are held through tax haven companies, because the shares in those companies are non-UK assets and therefore non-UK domiciliaries, even if they were resident here, wouldn't pay any tax. We suspect that for the same reason that CGT on UK residential property has been imposed on non-residents, there is now, or should now be, a charge to IHT on non-UK domiciliaries who hold UK residential property through an offshore 'envelope': matching the tax charge which applies to non-UK domiciliaries who own UK assets direct.

The reason for our question mark in brackets, just up there, is because this isn't actually the law yet, even though it applies from 6th April 2017! Owing to the general chaos caused by the muffed election this year, all or almost all of the tax changes, including this one, which were proposed to come in from the beginning of the current tax year are still just at Finance Bill stage as we write. However, there's not much chance, it seems, that the rule will be modified in any important way before it finally becomes law as the Finance Act.

The effective date seems likely to be the 6th April 2017 still. Again, if commercially feasible, the antidote to this new tax charge could be to change the mix of a non-resident's investment from residential to a greater element of commercial investment.

Brief Guide To Protection: Protect Your Family And Your Wealth (Part 1)

A tiny correction: *In last month's issue we made a small mistake. In Elaine McErlean's article the text should have read as below. Sorry for any inconvenience caused.*
However, as the value of the estate on Audrey's death exceeds the £2 million threshold by £500,000 the RNRB is reduced by £250,000 (£1 for every £2 by which the estate exceeds £2 million). So, even though her husband's estate was below the £2 million threshold and he did not use any of the RNRB, the value of his RNRB is lost, as is all but £100,000 of Audrey's.

It is of the utmost importance to consider all the risks to your future financial security and, unless you are in the fortunate position of having sufficient resources to avoid any adverse financial impact of the worst of them, to put in place adequate insurance protection as soon as possible to protect yourself and your family while you can do so. Within the context of your wealth plan, there are four main reasons to use insurance:

- to protect against the loss of earned income because of being unable to work for a prolonged period due to accident or ill health, using permanent health insurance (PHI – also known as 'income replacement insurance');
- to protect your surviving family or business against a known liability such as a mortgage or loan or to provide resources for members of your family to maintain their standard of living following your death or a serious illness or permanent disability;
- to protect against unforeseen but financially significant expenditure on future healthcare and/or long-term care using private medical insurance (PMI) and/or long-term care (LTC) insurance respectively;
- to replace the proportion of the value of your estate which would be lost to IHT following death using varying types of life insurance which would be used to provide funds to your beneficiaries from which they could pay the tax to distribute the estate among your intended beneficiaries.

The extent to which you may require protection will depend on your own circumstances. This is a huge topic and the limitations of this article mean I can only give a brief overview. If you would like a more comprehensive view on the subject, we have written the Bloomsbury Guide to Protection (from which much of this article derives) which can be downloaded, free of charge, from our website: https://www.bloomsburywealth.co.uk/guide-to-protection/.

Protecting your income

For those of working age, the most valuable asset you own – and the loss of which can have the greatest impact on your financial security – is your human capital. However, this is the one form of insurance most likely to be overlooked. A report by *Which?* in September 2016 found that people are twice as likely to insure their pet or mobile phone as they are to insure themselves!

Permanent health insurance provides a regular tax-free (in the case of an individual policy – benefits from a group policy are received by the employer and then paid to the employee, so taxed in the same way as salary) income if you are unable to work due to illness or incapacity and benefits continue until recovery, death or the cessation age selected at the outset. The benefit is paid after a deferred period, which can be between one and 12 months and is selected when the policy is established. Generally, the longer the deferred period and the earlier the cessation age, the cheaper the cover will be.

The basis on which benefits are paid following a claim will also depend on the definition used to describe incapacity. Incapacity can be defined as an inability to perform:

1. any occupation;
2. any occupation for which you are reasonably suited or trained;
3. your own occupation; or
4. a number of activities of daily living (ADLs).

The first definition is the widest and means being unable to carry out any work at all, whereas the third is the narrowest and means being unable to do the job which you were doing prior to the incapacity. Unless you are willing to take up a potentially lower-skilled (and lower-paid) job following a claim, 'own occupation' is preferable, although it may be more expensive since a claim is more likely to be paid than with a less stringent definition.

Your occupation (and hobbies) will also have a bearing on the premium – the more hazardous these are, the higher the premium is likely to be. So, if you are a trapeze artist in a circus who loves skydiving on your days off, all other things being equal you can expect to pay more than an accountant whose passion is running their model railway at weekends.

If you are already financially independent (in that paid work is optional) but still generating income from employment or self-employment then there is no need to insure against the loss of that income. However, if, for example, you are using that income to make regular gifts to a family trust or to individuals and you want to continue to do so in the event of ill health or if you are not yet financially independent and are relying on future earnings to become so, then insuring against loss of earnings should be a priority.

Protecting your family in the event of your death

If you have not yet reached financial independence and have dependants, you will probably need life insurance to replace the future earnings which would be foregone following your death. However, even if you no longer need to work (whether or not you still do), there are also several situations in which life insurance may be required as part of your overall wealth plan, such as child maintenance obligations and/or covering any IHT liability. Several types of cover are available and their appropriateness varies according to the requirement.

Term assurance

A term assurance policy has a fixed term from between one month and as long as 40 years, during which a lump sum would be paid out upon death provided that the premiums are still being paid.

The policy never accrues a cash value and premiums can be guaranteed to remain the same throughout the term. Alternatively, for a lower initial level of premium, future premiums can be subject to adjustment if the insurance company's rates change in the future. Benefits are free of income and CGT.

Term assurance is available in various forms including level (where the amount of cover remains constant), increasing (the amount of cover increases each year), decreasing (the amount of cover decreases periodically) and convertible (where there is an option to convert the term policy to a whole of life policy at the end of the term).

Family income benefit (FIB)

FIB is a variation of a term life policy in that it has a fixed term but instead of a lump sum payment it provides regular monthly or annual payments (free of income tax) in the event of the policyholder's death until the end of the policy term. This avoids the need for the recipient to have to invest the proceeds to generate adequate cash flow and therefore keeps things simple at what may be a very difficult time for the beneficiaries.

Another benefit is that an FIB policy is likely to be cheaper than a term insurance with the same term and initial cover because the insurer's liability risk gradually reduces during the policy term.

As with term insurance, the sum assured under an FIB policy can be arranged on a level basis or to escalate by a predetermined amount, such as in line with changes in the Retail Prices Index or by 5% a year.

FIB offers very good value protection for those people with earned income which they want to replace in the event of their death and where they do not wish, or have insufficient resources, to self-insure.

However, even if you are financially independent, FIB may still be useful as part of an overall estate plan, particularly if you have agreed to fund the education of family or friends or have other regular financial commitments, such as child maintenance payments, that you would like to continue in the event of your death.

Whole of life assurance

A whole of life policy is designed to provide a cash lump sum on death, whenever it occurs.

Historic policies

Originally, conventional policies were set up similarly to term assurance policies but the insurer would make an estimate of the likely date of death and use that as the expected term for determining premiums, so policies cost more than fixed term cover. As mortality rates fell, however, insurers found that premiums were being paid for longer than they had anticipated and so they introduced with profits versions to distribute some of the excess to policyholders in the form of adding annual bonuses to increase the sum assured based on the company's profits each year.

Such cover was still more expensive than term assurance so a 'low-cost' version was designed, which comprised two parts. One was the same with profits policy as before (but for a lower sum assured) but was combined with a decreasing term assurance whose purpose was to provide the same total cover at outset but at a lower cost.

Over time, the expectation was that the addition of profits to the whole of life element would offset the reducing cover of the decreasing term assurance element, so the cover would remain the same but the potential for future increases in cover (and value) was lower. Obviously, this was dependent on the continuing future payment of annual bonuses by the insurer, which was never guaranteed. This type of policy was also somewhat inflexible and the next development was the flexible unit-linked whole of life policy, which is the principal type available currently.

Unit-linked whole of life

These policies comprise both a life assurance and an investment element; premiums are invested into one or more of the insurer's available investment funds and sufficient units are automatically sold each month to pay for the cost of the life cover.

The initial premium is calculated based on the insurer's mortality expectations and an assumed investment return after costs, so if those expectations are met, the premium should suffice to maintain cover throughout life.

There are two ways of setting up a unit-linked plan. One is on a 'maximum cover' basis, where the premium is fixed at a lower initial level (usually reviewed after the first ten years and then at five-yearly intervals). The other is on a 'standard cover' basis where the premium does not need to be increased during the policyholder's lifetime as long as the underlying investment meets the pre-determined required rate of return, usually around 6% a year.

The drawback of the former is that premiums generally increase substantially at the end of the review period while with the latter what happens is effectively that the excess premiums beyond what are needed to pay for cover are invested via a vehicle which tends to be expensive and not very tax-efficient.

A compromise may, therefore, be to opt for maximum cover and save the difference into a more flexible and efficient investment with a view to drawing down on it as required to meet the higher premiums in the future.

As an alternative, many providers are now offering a guaranteed level of cover throughout the duration of the policy, paid for by a guaranteed premium, which is becoming increasingly popular because of the peace of mind it can provide for the policyholder, who knows from the outset what the premium and cover will be.

Whole of life policies are often used to meet an IHT liability, which I will cover in Part 2.

Insuring against serious ill health

Critical illness

Critical illness (CI) insurance, originally known as 'dread disease insurance', pays a lump sum on the diagnosis of any one of a range of serious illnesses or usually in the event of suffering a permanent and total disability (PTD). All policies cover against heart attack, cancer and stroke but some types of cancer are not covered and to make a claim for some illnesses, such as a stroke, it is necessary to have permanent symptoms. For other conditions, such as a heart attack, the illness must be of a specified severity. It is necessary to survive for a short period, usually around 30 days, after diagnosis for a claim to be paid (some life assurance policies will pay out on the diagnosis of a terminal illness).

Private healthcare

While the National Health Service (NHS) provides comprehensive and generally good-quality healthcare in the UK, particularly for acute conditions, many families like the choice, flexibility and speed associated with private healthcare.

While it is perfectly possible to pay for private healthcare as it is needed, whether this is viable will very much depend on the family's level of financial resources, expected quality of health throughout their lifetime and the treatment required.

For most people it will be preferable to put in place some form of private medical insurance (PMI) to provide protection against large medical costs and, as a result, protect the family wealth. The problem with PMI is that it becomes significantly more expensive with age, given the higher risk of claims arising at older ages. There are several ways to mitigate this, including having a high excess, accepting a restricted choice of hospitals and restricting certain medical conditions, with the last (and probably most popular) option being to restrict private healthcare provision to instances in which care could not be provided by the NHS within a specified time (typically six weeks).

Long-term care insurance

LTC insurance is similar to PMI in that it pays some or all of the costs of care, but only if the insured is unable to perform a number of ADLs or is permanently cognitively impaired (senile). ADLs include washing, moving, dressing, feeding, using the toilet and getting in and out of bed, and it is usual for the policy to require the policyholder to fail at least two, but more often three, of these before a claim will be paid. LTC insurance will continue to pay a claim until either recovery or death.

There are relatively few providers active in the LTC insurance market compared to other types of insurance, although those which are have considerable experience. The only current LTC insurance policy available in the UK market is a care fees annuity. This is designed for those who either need care immediately or wish to purchase cover on a deferred basis against an anticipated future need and wish to pay a single lump sum to pass the long-term liability for funding care costs to an insurance company.

Summary

Protecting yourself and your dependants is a crucial part of anyone's wealth planning. While you may be fortunate enough to have protection benefits provided by your employer, it is always beneficial to review these in the context of your long-term cash flow (which can be used to identify and quantify any potential shortfall) and wealth plan to ensure that the cover provided is adequate for your needs. If you do not benefit from an employer's scheme then it is vital you ensure that funds are allocated to provide the necessary protection. This should take priority over any savings allocated to long-term investment.

Next month I will look at how trusts can be used to protect any sums assured paid out on death and how life assurance can be used to meet a potential IHT liability.

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Offshore News

Guernsey launches beneficial ownership register

Guernsey agents must now keep an up-to-date record of the beneficial owners of legal entities for which they are responsible. The register is electronic and all information must be submitted by the 31st December of this year, although in some cases it can be delayed until the 28th February 2018. Even if there are no beneficial owners in relation to a Guernsey entity, this must be recorded in the register. A beneficial owner is deemed to be anyone who ultimately owns or controls a corporate or legal entity through direct or indirect ownership of more than 25% of the shares or voting rights or ownership interest in that entity or through control via other means.

Swiss asset manager falls on sword

The Swiss asset management company Prime Partners has entered into a non-prosecution agreement with the US government and will also pay a $5 million fine. The company has admitted helping American taxpayers to avoid US tax liabilities by opening and maintaining undeclared foreign bank accounts. It is believed that the case involves around 175 US taxpayers. Details of these taxpayers have now been passed to the Inland Revenue Service.

PwC scheme fails

A recent First-tier Tribunal has found that three Jersey subsidiaries which were set up as part of a tax-planning scheme designed by PricewaterhouseCoopers were not Jersey-resident but UK-resident. As a result, the scheme failed. The scheme, incidentally, was set up in 2004 and the amount of tax saved was around £8 million. The most interesting thing about the case is that for an offshore company to be deemed to genuinely be non-resident the directors must not be acting on the instructions of a UK parent.

UK rich reject tax havens

According to a recent article in the *Financial Times*: "UK wealth managers are quietly scaling back access to offshore accounts for their clients as the global crackdown on tax havens gathers pace." The newspaper went on to report that the number of wealth managers offering their British clients some sort of offshore service has fallen by around 20% over the 2016/2017 period. Despite this fact, two out of three wealth managers do still offer some offshore services.

It is believed that the main reason UK wealth managers are exiting this market is the perceived lack of confidentiality surrounding almost any offshore structure established by someone who is British resident and/or British domiciled. The automatic exchange of information between tax jurisdictions means that hiding ownership is now much harder, especially as information that tax authorities receive officially may be supplemented by unofficially obtained information such as that which could be gleaned from the Panama Papers, a trove of 11.5 million documents that were made available as a result of hackers.

A report from consultancy Oliver Wyman and Deutsche Bank predicts that wealth managers will lose $13bn of annual revenue as a result of the outflows linked to the current round of tax crackdowns, which will make it harder for the wealthy to use offshore accounts to avoid paying tax. The feeling among UK wealth managers, even the smaller ones, is that the political focus on tax evasion can only intensify as time goes on.

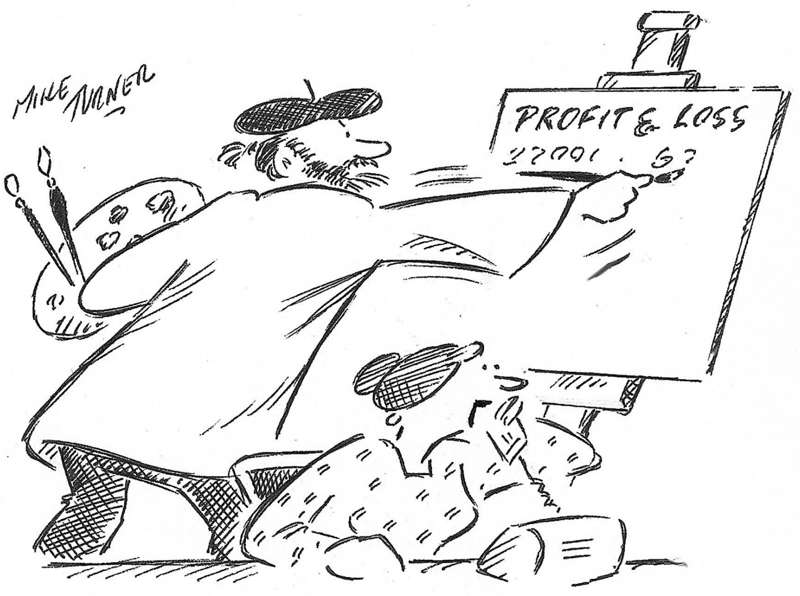
Where to go

According to the Office for National Statistics (ONS), some 7% more British citizens decided to leave the UK last year than the year before. If media reports are to be believed, the number exiting this year will be even greater. Of course, a high percentage of the new non-residents have a very definite job to go to and so, therefore, their destination is not a matter of personal choice. However, an equal percentage of new non-residents can choose where to move. If you fall into this latter group, you may be interested in some up-to-date advice offered by Eric Rosembloom, an American expat financial adviser, who now lives in the British Virgin Islands. His top tips for those planning to exit the UK are as follows:

• There are lots of places in the world that offer zero personal income tax to residents, including Anguilla, the Bahamas, Bahrain, Bermuda, the British Virgin Islands, Brunei, the Cayman Islands, Kuwait, Monaco, Oman, Qatar, St Kitts and Nevis, Saudi Arabia, Turks and Caicos, and the United Arab Emirates. Some of these jurisdictions will insist that you spend a minimum amount of time actually living there. For example, the rules in Monaco are extremely tight and also strictly enforced.
• There are also plenty of low-income tax jurisdictions. Consider, for example, Belarus (13%), Bosnia Herzegovina (10%), Bulgaria (10%), Hungary (15%), Lithuania (15%) and Macedonia (10%).
• Bear in mind that some of the most popular destinations for British expats have extremely high income tax rates. The top rate in Australia is 45%, in Spain 48% and in Ireland (54%).
• Consider a country with no minimum day count rules such as Malta (where the government doesn't mind if you don't put a single day into living there, or where the rules are pretty much ignored, such as Egypt (where they are grateful to get any tax income at all).
• Remember there are lots of countries where taxation is much more a matter of negotiation and honesty. The Vanuatuans, say, or the Macedonians, simply do not have the resources or desire to hunt down an expat living there for unpaid taxes. Providing you are paying something, they are inclined to leave well alone.
• Look for countries that only charge tax on your local income and on a remittance basis. Malta, again, wins here, as does Ireland. This means that income tax and capital gains will only be payable on local source income and gains. Overseas income and gains are only taxed if they are remitted.
• Consider being resident for tax purposes in one jurisdiction but actually spending your time elsewhere.
• Before you leave the UK, take out an international private health plan such as the one offered by AXA PPP. This may be expensive but you won't regret it.
• Remember that favourable tax laws can be changed at the stroke of a pen. Stay flexible.
• Wherever you decide to become resident, remember it is important to be able to prove it. If you decide to move to, for example, Bulgaria, then make sure you have a Bulgarian driving licence, a Bulgarian dentist, a Bulgarian doctor, a Bulgarian cell phone and so forth. Simply owning or renting property in a place is not evidence that it is your residence.
• Choose a different, international jurisdiction for your main banking. For someone coming from the UK, the Channel Islands, the Isle of Man or Gibraltar all make ideal banking centres.

A Song of Wyoming

When the American politician Liz Cheney speaks of her home state, her pride is obvious: "Wyoming is a special place. Where our farmers and ranchers rise before dawn and work until night to feed our nation. Where our coal miners and oil field workers produce the energy that powers America's homes and businesses, and where our families are guided by faith, know the value of hard work and deeply love our land." The state is also, rightly, proud of its new reputation as a financial services centre.



"Hello, Smudgekins and Smollet, creative accountants, how may I help you?"

In particular, whether you are interested in setting up a holding company or a trading company, providing you don't intend to directly carry out any business in the US, a Wyoming LLC or corporation offers many benefits.

To begin with, it couldn't be easier even if you were a non-resident to set up a Wyoming LLC or corporation. All the agent will require is your contact information, the name that you want to use for your company, who is going to be a director of the company along with a scan of that person's passport and, of course, payment. Incidentally, there is no legal requirement for the company agent to verify who you are, but every reputable agent will do so. Be assured, however: Wyoming really values privacy. The state does not require the manager or the members of a Wyoming LLC to be listed on a public database.

What about tax? Wyoming doesn't have any personal income tax, corporate income tax or excise tax. Wyoming LLCs are 'pass through' entities, which pay no taxes themselves. For instance, if you live in, say, the British Virgin Islands and form a Wyoming LLC, then all the income from that company would still be passed to you but you would end up paying no income tax because of where you lived.

What about the practicalities? The incorporation costs and annual fees in Wyoming are incredibly low. If you budget $1,000 to cover the first two years, you should be left with change. There is no minimum capitalisation, your directors and/or shareholders meetings can be held anywhere in the world and the state basically allows you to use a nominee shareholder and director.

Incidentally, you could also consider a Wyoming spendthrift trust. Such a trust can own property, shares, cash or any other assets. The trust is irrevocable, meaning the assets cannot be taken back by the person that puts him into the trust, its creator. But the creator can take out 5% of the assets per year plus any interest that has been paid by the trust on the assets.

Anyway, if you are looking for somewhere new to locate your business then, as John Denver put it: "Out on the trail night birds are calling / singing their wild melody / down in the canyon cotton wood whispers / a song of Wyoming for me."

Money

News

Dealing with inflation

Last month, the Office for National Statistics (ONS) announced that consumer inflation had reached a five-year high of 2.9% and that if it is measured using the Retail Price Index (RPI) then the rate increases to 3.7%.

Milton Friedman pointed out that "inflation is taxation without legislation", and there is no doubt that it is going to damage British consumers, especially at a time when the economy is experiencing falling wage growth and a lower GDP.

As those of us who lived through the period of high inflation that occurred on and off during the 1970s, 1980s and 1990s remember only too well, inflation is one of those things that creep up on one. It doesn't seem to be a problem and then, almost overnight, it is. True, it can be good news for borrowers in so far as it reduces the value of their debt. On the other hand, it is incredibly harmful to savers, investors and anyone on a fixed income, such as those who are retired. Rising prices mean lower consumer spending. Lower consumer spending damages the economy. It quickly becomes a vicious cycle.

So what can an investor do in order to reduce the impact of price rises? Here are a few ideas:

- Invest in physical assets. Land, property and gold have all proved to be good hedges against the wealth-eroding effects of rising prices.
- Sell your bonds. Bonds, especially corporate bonds, are generally bad news during periods of rising inflation. This is because they pay a fixed rate of income that buys less as inflation eats into it.
- Go global. Invest in stocks and shares and choose companies that are diversified, ideally internationally. Look for global companies with diversified earnings and a high barrier to competition.
- Protect your savings. Make sure you take full advantage of all the tax-free options.
- Pay off your borrowings. If you have got savings then use them to pay down your borrowings. This will always save you money.
- Shop around for rates. Make sure you are paying the lowest possible rate on any borrowing, especially your mortgage, and that you are receiving the highest possible rate on any savings.
- Cut your costs. Reduce your spending on non-essential and luxury items in order to protect your income and capital.

There is no such thing as free childcare

The media has been making a huge fuss – or perhaps it would be more truthful to say the government has been making a huge fuss and the media has picked up on it – about the new free childcare benefits. Basically, the scheme is supposed to offer 30 hours per week of free childcare. However, the rules are incredibly complicated and so is the online registration process. Moreover, the benefit is only available to those who live in England, both parents must be in work and it isn't available during the school holidays. Most disappointing of all, 'free' does not necessarily mean *free*.

The rate childcare providers receive from the government (via local authorities) is not usually enough to cover the cost of providing childcare. The government quotes a funding rate of £4.94 per hour for the 30 free hours, but many councils are raking money off the top so that the actual provider only receives £3.60 an hour. Given that many nurseries say that it costs up to £7.50 per hour to actually look after a child, there is obviously going to be something of a gap, which parents are going to be expected to meet.

Given that this benefit is available to someone who earns up to £100,000 a year (£200,000 for couples), we would question whether the government has really thought this benefit through. Surely, it would be much better to offer it to individuals earning up to, say, £50,000 a year, but to increase the benefit itself.

Crunch time for interest-only mortgages

According to recent figures produced by the Council of Mortgage Lenders, around 20% of all outstanding residential mortgages in the UK are interest only. In other words, around 1.9 million borrowers are just paying the interest on their debts, without making any dent in the underlying capital. Research suggests that around one in ten borrowers has no plan in place to repay the capital when the loan term expires. Others, who do have a plan, may find that the endowment policy or other investments they intended to use to repay the capital at the end of the term will not be sufficient.

Many of these loans were mis-sold, but, unfortunately, the chances of being able to make a claim against the lender are slim as borrowers are generally out of time when they realise their position. Anyway, banks may have mis-sold but you can be certain that at the time they sent borrowers letters that outlined the mortgage terms.

So, what are the options if you are coming towards the end of an interest-only mortgage and you do not have sufficient funds to repay the capital?

- Refinance. This will very much depend on your age, income and the amount of equity you have in the property. Mortgages are now more freely available to older borrowers and if you have sufficient capital and a regular income there are lenders who will look at lending.
- Sell and downsize. This can be a bitter pill to swallow, especially if one has friends in a particular area, but it can be the best option. If you owned a house, you could consider turning it into two flats or selling off part of the garden.
- Equity release. This is a costly solution. It would certainly allow you to carry on living in your current home, but every year the interest is eating into your equity.

The one thing that all advisers say is, don't leave it to the last minute to come up with a solution. The sooner you tackle the problem, the better.

The importance of saving

Are you saving and/or investing enough? It is now, more or less to the day, ten years since the great financial crisis began. A crisis that resulted in a run on Northern Rock, the bankruptcy of Lehman Brothers, the closing-down of Iceland's three big banks and an endless string of bank, insurance company and financial institution bailouts. The problem is that ever since 2007 we have enjoyed (if 'enjoyed' is the word) a period of low interest rates. The problem with low interest rates is that they encourage certain sorts of behaviour. Borrowing, for one. Reduced levels of saving, for another. Governments around the world are taking all sorts of action to try to break the cycle, such as pushing up wealth taxes and raising the pension age. Anyway, if you want to ensure your long-term financial health, keep spending to a minimum, avoid debt and save as much as you possible can.

Alternative Investment Opportunities

Bottled returns

A quick update on Bordeaux wines – a popular alternative investment – in light of prices for last year's *en primeur* vintage.

En primeur or wine futures is a method of purchasing wines early while the wine is still in the barrel. This offers the customer the opportunity to invest before the wine is bottled. Payment is made a year to 18 months prior to the official release of the vintage. The reason to do this is, of course, because wines purchased *en primeur* are generally cheaper than they will be once bottled and released to the market. However, of course, this is not guaranteed and some wines will lose value over the period.

En primeur week in Bordeaux is always particularly frenetic. As one chateau owner once remarked, it is like the Oscars, the Cannes Film Festival and Formula One coming to town for five days. Thousands of wine professionals, merchants, brokers, traders and journalists descend upon the region to taste and critique barrel samples. The event, I should add, occurs in spring – usually at the end of March.

To understand what happened this year one needs a bit of history. The 2009 and 2010 vintage were exceptional. Really exceptional. There then followed five years of relatively average wines. In 2016, when the customers were considering the 2015 vintage, a sort of collective impatience seems to have come over the producers and they priced it fairly high. The vintage *was* better than the previous years, but by no means fantastic. As a result, everyone was disappointed. Sellers didn't get what they felt they were owed. Buyers weren't much better satisfied.

Which brings us to the 2016 vintage. It was very good. Not as good as 2010. But still, very good. However, it was not consistent and although if one had bought a complete basket of all the available wines when they were launched one would have been around 7% up on the purchase, this figure hides much. For example, since the spring La Fleur has risen by almost 54%, Canon has risen by about 35% and Les Carmes Haut-Brion has risen by about 33%. On the other hand, Pavie has dropped by 5 or 6% and VCC and Pontet-Canet by slightly more.

Where does that leave investors? It is early days to know whether the 2016 vintage is going to turn out to be a real classic, but early signs suggest that it could well be worth a flutter. Even if it doesn't achieve the stratospheric gains of previous years, it is obviously going to be drinkable, extremely drinkable indeed.

Zopa reopens for investors

The UK's first peer-to-peer (P2P) lender, Zopa, is hoping to reopen to new investors before 2018. The online funding site has experienced a dramatic imbalance between those who want to lend money via its platform and those looking to borrow. Unable to keep up with investor demand, it stopped taking money last March. It is easy to see why investors are so keen. Returns of up to 6.3% are available and it is even possible to wrap the investment in an ISA, making it tax-free. Zopa is rumoured, incidentally, to have a waiting list of over 15,000 potential investors. However, it is not all good news. The company is worried about declining credit quality and has dropped its projected returns. Still, in the current financial climate it is easy to see why so many investors are keen on P2P lending.

A red hot investment

Are solar panels a good investment? One personal finance journalist opened a recent article on solar investment with the following statement: "Sunshine is the best investment I have made in a decade. It has given me an inflation proof income until 2036 and a source of free energy."

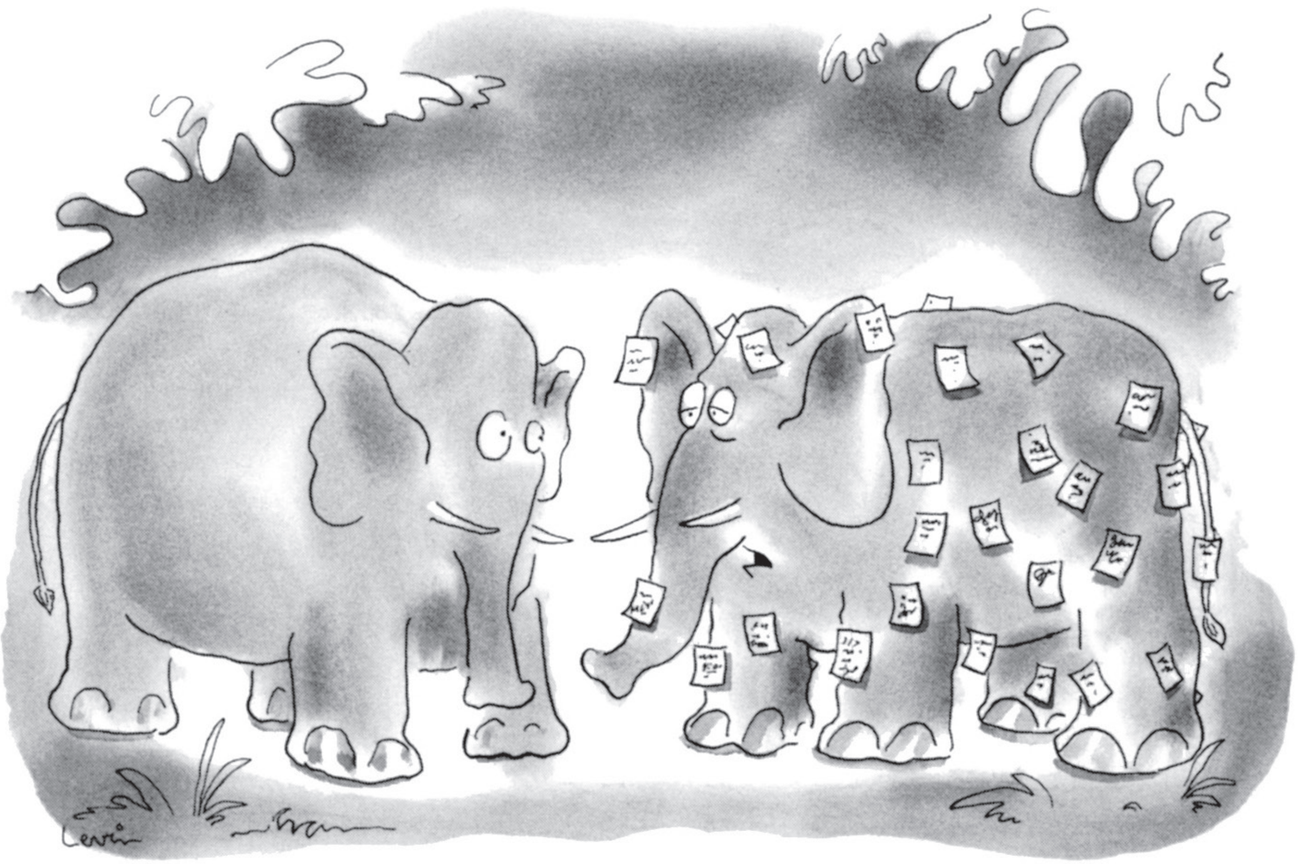
Is this an exaggeration? Well, there is no doubt that installing solar panels will save you money on your energy bills. You will also earn money from the Feed-in Tariff scheme for producing electricity.

Indeed, households who install in 2018 can expect a return on investment within fourteen years and make a 4.8% return over 20 years.

Installation prices will, of course, vary from area to area so the figures quoted in this article must be considered in the light of this.

Perhaps the first thing to be aware of is that under the government's Feed-in Tariff scheme you receive cash in return for generating your own electricity using renewable energy. All proceeds you make are tax-free. Payments are guaranteed for between 20 and 25 years depending on when you had the panels installed. The price per kilowatt hour (kWh) of energy is index linked, meaning that it will rise annually with the Retail Price Index measure of inflation. Unfortunately, the government reduced the Feed-in Tariff rate for small domestic solar PV installations by 65% on 1st January 2016. However, that doesn't mean it isn't still a very worthwhile investment.

And although the Feed-in Tariff has fallen, it must also be remembered that the cost of installing a photovoltaic system has also fallen. You can now install a 4 kWh system of 16 panels for around £4,500, which is as much as a third of the price of ten years ago. No wonder that the financial adviser said he thought solar panels were a better investment than an annuity. Especially as the solar panels should last indefinitely, whereas an annuity ends when you die.



"As I get older, I find I rely more and more on these sticky notes to remind me."

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Making Tax Digital... Eventually

Last year, as a result of the general election, the planned 800-page Finance Bill was reduced to a mere 150 pages. One of the main pieces of legislation to be cut was Making Tax Digital (MTD) – a plan to force millions of businesses and self-employed people, including landlords, to file multiple tax returns each year.

The delays were welcomed by taxpayers, business groups and senior political figures across all parties. As it currently stands, if you run a small business or are self-employed you basically have to file a single tax return online or by post once a year. The original plans for MTD is extremely unpopular because it meant that those affected would face a tax deadline of one sort or another almost every month.

The delay caused by the general election gave objectors time to lobby ministers and as a result a new timetable was launched over the summer. This included:

- only introducing MTD for businesses with a turnover above the VAT threshold, which is currently £85,000;
- restricting MTD for only two VAT purposes;
- launching MTD in 2019;
- not introducing the idea of digital records and quarterly HMRC updates for other taxes until at least 2020.

The government claims that this means businesses and landlords with a turnover below the VAT threshold will be able to choose when to move to the new digital system.

HMRC still expects smaller businesses under the VAT registration threshold to adopt MTD and it is clear that the real objective is to force even the smallest of businesses to report their profits on a quarterly basis.

The problems with quarterly reporting of business profits is that 16 weeks is an extremely short period of time and could clearly give a false impression of the way a business is actually going.

It must also be remembered that HMRC has not done well in the past when introducing new technology. In fact, it is fair to say that the opposite is true. The government says the MTD will only be rolled out once it has been proven. Not very reassuring.

If one wants evidence of how badly HMRC performs when it comes to computerising the taxation system, a quick Google search will produce hundreds of examples. For instance, *The Telegraph* reported in August that: "HMRC has already introduced the personal tax account which allows you to view your tax liability online, but this has already caused chaos for some elderly people." Paddy Millard, the founder of independent charity Tax Help for Older People, warned that as much as 20% of Britain's population could be affected by the move to digitise tax returns.

So where does this leave landlords? It is too early to say, but it is likely that:

- The decision about whether to apply the cash basis or the accruals basis will be able to be made separately for each separate property business but not for each property.
- Landlords who also have trading income will be able to make independent decisions about whether to apply the cash basis to their property and trading

businesses.

- Joint owners of property (who are not in partnership, or spouses or civil partners) will probably be able to decide individually whether to apply the cash basis or the accruals basis.
- Income will be treated as received when it is paid to the letting agent, as opposed to the landlord.
- Refundable security deposits will only be recognised as income when it is established that the money is legally the landlord's to retain.
- Like the accruals basis, the initial cost of qualifying capital items will not be a deductible expense under the cash basis, and landlords can only claim replacement of domestic items relief on the cost of replacements.
- Similar restrictions on financing costs will apply to those using the cash basis and the accruals basis.
- The cash basis cannot be used by companies, limited-liability partnerships (LLPs), partnerships with members other than individuals, trustees of trusts and personal representatives.

When MTD comes in, landlords are going to need to make a number of important decisions. Not least if you are operating an unincorporated property business you need to decide whether you want to continue to elect to be taxed based on generally accepted accounting practice (GAAP). You will also need to think carefully about what hard copy and digital records you wish to keep and, of course, how you are going to store them.

For The Record

While on the subject of records, a quick reminder that landlords need to keep really detailed records of all income and expenditure, as the penalty for failing to do so can result in a penalty of up to £3,000 for each tax per year. So, a VAT registered landlord not having the right records for, say, a five-year period could receive anything up to a £75,000 fine.

When checking that you are fully compliant in terms of record-keeping, bear in mind that you should cover not just income and expenditure but also any capital gains, stamp duty land tax (SDLT) and the annual tax on enveloped dwellings (ATED). Of course, if you are VAT-registered you will also need to keep VAT records.

However, perhaps the first place to start is with income and expenditure. You need to keep these records for five years following the 31st January self-assessment deadline, or six years from the end of the relevant accounting period for corporation tax. Your records should include:

- rent received;
- the dates when a property is let;
- any income from other services provided to tenants (such as cleaning);
- rent books, receipts, invoices and bank statements;
- mileage logs (for journeys solely for property business purposes);
- allowable expenses for running the property (such as gardening).

The taxman loves to disallow expenditure on the basis that it was not incurred 'wholly and exclusively' for business purposes. Therefore, you may find it worthwhile to keep other documentary evidence such as agreements, notes of meetings and diary entries. Even photographs could provide evidence at some point in the future.

When it comes to the replacement of domestic items relief, don't forget to keep receipts and, again, possibly photographs. What else? Here are some other tips:

- Remember to keep any records that relate to the provision of finance, any valuations you get done and any plans you get drawn up.
- UK lettings, furnished holiday lettings, rent-a-room and overseas lettings should all be treated as separate businesses. You need to identify and record all expenditure and income separately.
- If you make a capital gain, you will need to keep records for the period from the acquisition until the time of disposal. Remember you will need to keep invoices of any related services such as those made by surveyors or legal advisers.
- When it comes to SDLT, it is important to have any relevant instruments relating to the transaction, and in particular any contract or conveyance and any supporting maps, plans or similar documents.

There is currently no HMRC rule on how records should be stored. You could keep your files in a paper format or electronically. However, if you store information electronically, all the information must be captured (i.e. the front and back if the document is double sided) and the information must be capable of being presented to HMRC in a readable format.

If you find that records have been lost, stolen or destroyed, it is important to try to recreate them so that a return can be filed. It is also useful to be able to point to evidence of that loss, theft or destruction.

When VAT Is Your Friend

Imagine a situation where you own or acquire a piece of land and have or are able to obtain planning permission on it allowing you to build, say, a single house. Your predominant concern will probably be to minimise your capital gain.

But there are possibilities with regard to VAT. Because although the sale of a new residential dwelling by the person building it is zero-rated (in other words there is no VAT when you sell a new house), it may still be worth registering in order that you can reclaim any VAT on expenditure.

VAT is, of course, only relevant if supplies are made in the course of a business; if you are building a house and planning to sell it, you are definitely engaged in the supply of goods or services and so you can certainly register for VAT. Moreover, assuming that the total sale price of the house is over £85,000, you have a second reason to register.

When should you register? A business can go back up to four years and register as long as it was making taxable sales at the time or had an intention to make them.

What can you claim? Well, construction services and materials supplied by a builder will be zero rated for work on a new dwelling but you will still be able to claim on professional fees (architects, surveyors, project managers, solicitors, estate agents, accountants, etc.) and on materials purchased without any related services.

Incidentally, having made your sale and filed your VAT return you can then, if you wish, deregister if you have no intention of carrying on running the same business.

Don't forget your fixtures

A quick reminder that capital allowance claims may be made on fixtures for commercial property. Such fixtures can make up a high percentage of the value of a particular property. For example, in a hotel, fixtures may account for up to 40% of the value and the same is also true of care homes and certain sorts of offices. Retail, industrial and furnished holiday lets may all have fixtures valued at between 5 and 25% of the total value.

What do we mean by 'fixtures'? Fixed plant and machinery in buildings, such as electrics, water systems, air conditioning and lifts. There is a big difference, incidentally, between a chattel and a fixture. A chattel is something that can be moved, whereas a fixture is, as it were, fixed.

When do you claim? There are many times when a claim may be possible including when it is built, extended or refurbished as well as when it is acquired or disposed of. Incidentally, one needs to be careful because often the value of a capital allowance's claim can be lost through sloppy accounting.

An Exciting Venture

Property acquisition, investment, development and funding often involve collaborative joint ventures (JVs) between a number of parties including, of course, property companies, investors, developers, landowners, public sector bodies and even funders who, between them, will contribute expertise, capital, property, land, resources and skills. They will also, of course, share risk.

Perhaps the first consideration for anyone contemplating a JV will be how to structure the arrangement. There are a lot of different factors to weigh up, including limited liability, tax and flexibility (some partners may wish to sell early; some, later).

The first, and perhaps the most common, option is to simply draw up a contract where one party provides a service in return for an agreed share of profit. This has a major benefit in that a JV has no separate, legal entity and is not, therefore, exposed to any risk. A second, almost as popular, arrangement is to start a partnership. This may be an unlimited partnership, a limited partnership or an LLP. Whichever route you opt for it is important to bear in mind that you will need to draw up a partnership agreement. Partnerships are, generally, tax transparent, but it is worth remembering that under new regulations many partnerships now need to be registered at Companies House and will be expected to disclose a considerable amount of information. You could also consider a limited company and something called a community interest company (only appropriate if you are doing something without a profit motive).

Tax, will, of course, be a major issue and you need to think about how you want trading profits and losses, SDLT, capital gains, capital allowances, VAT, National Insurance (NI) and the extraction of profits to be treated from a tax perspective.

Another major consideration is who is going to make the decisions and what will happen if there is any sort of disagreement.

After lenders began to tighten lending criteria, JVs became increasingly popular. After all, they allow property investors who are short of capital to stay in the game with less money. Here are a few tips:

- Make sure that all financial transactions are carried out with the help of a solicitor and not directly. This ensures that money-laundering guidelines will be followed and there is a proper money trail. It is important because if you come to refinance the property you will need to explain where the original cash came from.
- If it is your plan to refinance using a buy-to-let mortgage, put your borrowing in place from the beginning as many lenders won't replace private finance.
- If your partner wants to have legal title to the property, you may find it is easiest simply to have a contractual arrangement whereby you charge a fee or a percentage of profits etc. My basic advice is to keep any arrangement as simple as possible.
- If you aren't very closely related or connected to your JV partners, take the time to check their history, including their credit records. Don't go into a JV with someone you don't really know.
- Whatever the legal structure you use, you should still have a JV agreement covering what happens in the event of divorce, marriage, falling out, dissolution, bankruptcy, mental incapacity, illness, imprisonment and death.
- Before you purchase a property, decide whether you are purchasing it as either tenants-in-common or joint owners. Bear in mind that if you opt for joint ownership and one of you dies then the property will automatically revert to the other party.
- Remember to take out adequate insurance, including life insurance.
- Make sure it is clear who is going to pay what expenses and who is going to be responsible for which taxes.

Landlords Hit By Tougher Lending Rules

The government's new lending rules came into force at the end of September making it considerably more difficult for buy-to-let landlords with four or more properties to obtain finance.

The new rules mean that lenders must consider the financial viability of all the mortgaged properties in a particular landlord's portfolio and not just the property they are lending against. The new rules were put in place by the Bank of England's Prudential Regulation Authority (PRA).

What basically amounts to an affordability test is expected to have a considerable effect on the market. So-called portfolio landlords will have to produce much more information before they can take out a loan. Lenders will wish to see other borrowing, cash flow, tax records and even business plans for all the relevant properties. Landlords may also be expected to show details of other sources of income.

The PRA guidelines mean that the monthly rental income must cover at least 125% of any mortgage interest. Moreover, it must be stress tested at an interest rate of 5.5%.

The new rules have already driven some players out of the market. For example, Santander has stopped offering portfolio landlords capital and others, such as Barclays, are setting limits to portfolio sizes.

Although portfolio landlords only account for 7% of all landlords, they do own nearly

40% of all buy-to-let property. As a result, the new regulations are expected to have a major effect on the market. Given that many landlords are struggling with sluggish house price growth and falling rental income, the new regulations come as an extra blow.

Corbin warns landlords

Jeremy Corbin, the Labour leader, has made it clear that he plans to introduce tighter rent controls if he becomes prime minister. Mr Corbin said the UK should adopt rent controls that already exist in many cities around the world, as well as impose a tax on undeveloped land held by developers.a capital allowance's claim can be lost through sloppy accounting.

Property Opportunity

I'll be in Scotland before ye

The Scottish property market is one of the most complicated in the British Isles. Some areas in Edinburgh and Glasgow are the most expensive in the UK; certain rural areas, including the Highlands and Islands, are amongst the lowest. The market is affected by a wide number of hard-to-assess factors, including:

- the effects of Brexit;
- calls for Scottish independence;
- low average property prices (£145,735 versus £220,094 over the rest of the UK);
- the low price of oil which accounts for a major part of its GDP;
- relatively slow growth (anticipated at between 1 and 1.3% a year at the moment);
- a low, basically static, population of around 5.37 million;
- relatively high projected population growth for certain areas, including Edinburgh (21%), Aberdeen (17%), Midlothian (26%), Aberdeenshire (20%) and East Lothian (18%);
- an ageing demographic;
- a slightly lower average income than the rest of the UK;
- a high dependence on EU investment;
- a surprisingly strong property growth (6.8% last year);
- a surprisingly high yield at 4.9% (compared with 3.2% in London, 4% in Wales and 3.4% in the South-East);
- a relatively modest housing shortage, although there are 150,500 people on council waiting lists;
- a rapidly expanding private rental sector;
- the fact that Scotland (particularly Edinburgh, Glasgow, Aberdeen and Dundee) is home to some 220,000 university students.

It wouldn't take much for things to go brilliantly well for Scottish property investors. For example, if oil prices rise, government and EU subsidies stay in place, the country does not leave Britain and Britain does not leave the EU then it is easy to see property prices in certain areas forging ahead. On the other hand, it is equally easy to see how certain events could push Scottish property prices down. However, the one overriding fact to remember is that at the moment Scottish property yields are remarkably high when compared to the rest of these islands. Accordingly, it may make a very good place to invest.

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