



Private clients newsletter

Including information on reducing your SDLT bill,
advice on what to do if you are subject to an HMRC
investigation and a guide on choosing your executor.

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pem.

Welcome

Albert Einstein once said “The hardest thing in the world to understand is the income tax.”

It is not often I would disagree with a genius but I feel I am on strong grounds here, however had Albert been talking about Stamp Duty Land Tax (SDLT) I would have been in complete agreement. I discovered recently that it is very easy to inadvertently overpay SDLT but fortunately my team of specialists managed to resolve the problem! The article on page 4 discusses one of the often misunderstood reliefs available when purchasing a home that has a granny flat arrangement.

If the rules on purchasing a home were not enough to contend with on a house move, HMRC are planning to introduce new rules from April 2020 that will complicate the sale of a home as well. Since April last year non-UK residents have to report and pay Capital Gains Tax (CGT) on the sale of UK residential property within 30 days! This has proved to be such a cash flow advantage that HMRC are introducing this for all sales of residential property, subject to

complicated exemptions. Page 5 discusses this in more detail, whilst page 6 discusses the horror of a tax enquiry.

On a personal note many of us are asked to stand as an executor for friends and family. The article below discusses why you should not agree to this lightly. If you want to discuss this or any other issue raised please do get in touch.

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A guide to the role of executor: A matter of trust

An executor is a role which carries great responsibility. Before choosing your executors or agreeing to be an executor you should appreciate the task ahead.

This was highlighted by a recent case where an executor distributed the assets of an estate on the understanding that the main beneficiary would pay the Inheritance Tax owed. The beneficiary left the country without paying the tax – leaving the unfortunate executor to pick up an eye-watering bill of more than £300,000.

If you are thinking of making a Will and choosing an executor, or if you have been asked to act as an executor yourself, it is important to find out as much as you can about the role and the expertise and qualities required.

PEM’s probate team has produced a basic guide to get you started.

Choosing an executor

Firstly any executor needs to be over the age of 18. Ideally you should have more than one, preferably two or three. People commonly choose a family member, possibly their spouse and/or children and a professional adviser (often their accountant).

These must be people you can trust and who you believe will be capable of taking on the role. It can be time consuming and brings with it a lot of responsibility at a time when people will be grieving.

The people you choose must be able to carry out their duties in a responsible and efficient manner.

You should also ask yourself whether the people appointed would be able to work together. Avoid appointing people who together might come into conflict. ►

Give some consideration to the age of your potential executors. If you are in your fifties or sixties it may be appropriate to appoint individuals of a similar age but if you are revisiting your Will in your seventies or eighties ensure that younger executors are included.

It is a good idea to consult with intended executors before appointing them in your Will to ensure that they would be happy to take on the role. It will give you peace of mind and, if they do not wish to take on the role, gives you the opportunity to consider others.

The duties and responsibilities of an executor

The duties and responsibilities of an executor do not commence until death. Essentially they are a mixture of legal, tax and administrative responsibilities, but these are often shared between the executors playing to their different strengths. The general tasks that will need to be undertaken are shown in the box.

Executors must understand the seriousness of their role. It is a fiduciary duty: they must act in good faith, must not profit from their position, must not place themselves in a position of conflict and they must demonstrate a duty of care to the beneficiaries.

Are executors paid?

Although sometimes a Will may include a legacy to an executor, it is essentially a voluntary role which may take up a significant amount of time.

Therefore generally a lay person acting as an executor would only be able to charge for out-of-pocket expenses. This is in contrast to a professional who is usually able to charge for their services.

Can you be held liable for unpaid tax?

Yes, one of the roles of an executor is to ensure that the tax is paid.

Can you resign as an executor?

If you decide at the outset that you do not wish to accept the responsibility you can 'renounce' the right to act and the role will be fulfilled by the other executors. That said if you have begun the process of dealing with the estate you must follow it through. You cannot then resign.

In conclusion the role of an executor is not to be taken lightly – it is for life – you are not discharged once the estate is finalised. This means that if there is further income, or a claim is made against the estate, you must deal with it.

If you have any questions about choosing an executor or accepting the role our probate team would be happy to help. ■



Acting as an executor

- Check you have the most up-to-date Will and any codicil
- Arrange the funeral if this is not being done by the family
- Establish the assets and liabilities of the deceased's estate
- Protect those assets, for example securing and insuring the deceased's home
- Finalise any estate where the deceased was an executor
- Complete and submit an Inheritance Tax return and Estate self-assessment returns if required
- Pay any Inheritance Tax due
- Obtain a grant of probate where required – this gives the executors legal ownership of the assets
- Collect in the assets, recover debts and settle any liabilities
- Hand out specific gifts and pay any legacies
- Determine what is left and distribute the estate in accordance with the terms of the Will

Stamp Duty Land Tax: Multiple Dwellings Relief

Buying a home with a granny annexe could, surprisingly, save you money. Multiple Dwellings Relief (MDR) is a widely overlooked tax relief. How does it work and could there be advantages for you?

If you bought your current home some years ago but are now thinking of moving, the potential Stamp Duty Land Tax (SDLT) bill for your new property may come as a shock.

In recent years SDLT has evolved from a simple 'flat rate' tax into a complex 'sliced' tax with a starting rate of 0% and a top rate of 12%.

There are opportunities to legitimately reduce your SDLT bill, so taking professional advice is crucial. Your first instinct may be to rely on your solicitor to work out your SDLT bill, but many conveyancers are not necessarily tax experts. A leading broadsheet newspaper recently claimed that "house buyers are routinely paying too much SDLT because their solicitors fail to understand the complex rules". PEM SDLT specialists are, however, experts in this field and can help.

How Multiple Dwellings Relief works

Multiple Dwellings Relief, as its name suggests, is available when a purchaser buys a residential property which is 'capable' of being used as two or more dwellings at the same time. MDR allows the purchaser to pay SDLT on the average price of the dwellings rather than the aggregate price. This allows each 'dwelling' to access the nil rate band and the lower rates, offering substantial savings.

MDR is available when purchasing a property consisting of a number of individual flats. MDR can also sometime cut the SDLT bill on your main residence – for example, buying a property with an annexe or outbuilding which is a dwelling in its own right.

Example

Jane buys a large main house with a garage that has been converted into a granny annexe. The new house will be her main residence. The property costs her £1,200,000 and, as a single property, SDLT will be £63,750.

However, if a claim for MDR is appropriate, SDLT will be paid on the average price of the dwellings. The total SDLT bill will be £40,000, giving a saving of £23,750.

When would a property be treated as two dwellings?

Properties that have annexes, basement flats or converted garages or barns in the grounds are all likely to be good candidates for MDR.

HMRC offers little guidance on when a part of a property could constitute a second dwelling – usually a separate entrance and independent accommodation including a kitchen and bathroom. The properties do not have to be entirely separate.

It is possible to amend your SDLT return up to 13 months after the date of completion. Buyers who have recently bought suitable properties could still be in time to secure a refund.

Those that are currently looking to buy may benefit from greater buying power than they expected as their SDLT liability is reduced, freeing up funds to spend elsewhere.

As a note of caution, there are circumstances in which a claim for MDR could be counterproductive, but in the right circumstances, MDR offers a welcome saving.

The devil is in the detail, there are layers of conditions and exclusions, so you should seek professional advice.

Capital Gains Tax: New 30 day reporting on residential property

The timescale for paying Capital Gains Tax (CGT) after the sale of a residential property is set to be slashed. The measure means that from April 2020 sellers may have just 30 days to report and pay.

For UK residents the current system for collecting CGT following the disposal of residential property moves at a leisurely pace. Taxpayers enjoy a period of between 10 to 22 months from the date of exchange of contracts to report any gains to HMRC and settle any tax due.

A revolution is under way in the world of taxation of residential property. It has been government policy since 2015 to speed up collection of CGT.

This already applies to non-UK residents who are obligated to report, and mostly, pay tax on the disposal of UK residential property within 30 days of completion. The Chancellor has proposed to extend this to UK residents.

Although the rules won't come into effect for almost two years it is important that you are aware of the possible changes as gains will need to be calculated in advance of the exchange of contracts. As always, the best way to do this is to take professional advice. Many sellers will rely on their conveyancing team for property transaction compliance, but they may not be aware of the obligations – particularly where an overseas adviser transacts overseas property sales.

Who will be affected?

The measure is mainly aimed at second property owners, particularly buy-to-let landlords. It is proposed that the rules will not apply to properties held by limited companies.

Most people selling their home won't pay CGT thanks to private residence relief. However, where 100% relief is not due some CGT may be payable and a return filed within the 30 day deadline. HMRC will charge penalties for late returns, and payments made after the deadline will incur interest.

The new rules

From April 2020, UK residents may need to report

their disposal of worldwide residential property within 30 days of the sale completing.

The taxable gain on the disposal of a residential property in the relevant tax year will be calculated and the taxpayer's income for the tax year in question estimated, as this affects the rate of residential CGT applicable (18% or 28%).

Gains on other types of assets can be ignored at this stage, but the annual exemption and available losses can be deducted to arrive at an estimate of the tax due.

Taxpayers who are able to realise losses on other assets should therefore plan ahead to minimise the impact of the new rules on their cash flow.

A payment will also be due to HMRC within 30 days. Further returns will be required for any subsequent property disposals, with the payments on account calculated on a cumulative basis.

The payment on account will be credited against the liability due when the self-assessment tax return for the year is completed, and the figures for all income and gains are finalised.

Exceptions

A taxpayer disposing of a residential property will only be exempt from submitting a return if no tax is due. Those making a disposal to a spouse or civil partner, or those who are certain that their gain will qualify for 100% private residence relief can rest easy. Everyone else will need to go through the calculation process and submit the required return.

The only other exception is where the gain on the disposal of an overseas property is taxed in that country at an equivalent rate to the CGT payable in the UK. However, it is rare for CGT parity due to different calculation methods and tax rates.

Non-UK residents

From 2020 non-UK residents will no longer have the option to delay paying any tax due until the self-assessment deadline. ►

Concerns

The cash flow benefit to the Treasury will be substantial. However, this is at the expense of increasing complexity for a large proportion of UK taxpayers.

HMRC has further muddied the waters by recently introducing an optional 'real time reporting' facility

for taxpayers online: this has no basis in tax law, falls outside the self-assessment regime and agents are unable to help taxpayers complete it. Proceed with caution!

If you plan to dispose of any property please contact us to discuss your circumstances – waiting until after the sale completes or your tax return is due will, in future, be too late. ■

The horror of a tax enquiry: Managing the stress

Tax return enquiries can be stressful, time-consuming and expensive, but they are on the rise. What can you do if you find yourself on the taxman's hit list?

It all starts with the letter from HMRC you hoped you would never receive, explaining that your self-assessment tax return will be the subject of an investigation. Your first thought will almost certainly be "Why me?"

Whilst some enquiries are triggered by errors or inconsistencies in tax returns, others are picked by HMRC at random. Initially you won't know whether you are a raffle prize or whether HMRC thinks it has 'got something on you'.

The reputation of your agent can determine the likelihood of being picked for a random enquiry. PEM has an excellent reputation and the number of enquiries our clients receive is relatively low.

Background

When self-assessment was introduced in 1996 the Inland Revenue (HMRC as it is now) proposed to enquire into a taxpayer's return every three years. Without the resources to carry this through enquiries became a sign that HMRC knew something.

In the last 20 years the technology and information available to HMRC has changed out of all recognition. Information is automatically received from a wide range of sources – card transactions, the DVLA, the Land Registry, social media and online marketplaces. Since September 2017 information is also received on overseas bank accounts from more than 60 countries. If any of this information differs from what is on your tax return, HMRC will want to know why.

Stage 1: The letter

It is important to check that the enquiry notice is 'in time'. Usually, HMRC only has 12 months from the date you submit your return to open the enquiry.

There are two main types of enquiry:

- a 'full' enquiry which examines your returns and accounts in great depth; or
- an 'aspect' enquiry which looks at a single aspect of your return – for example HMRC may believe that some bank interest has been inadvertently missed off your return.

Unfortunately that initial letter doesn't always tell you which enquiry you are facing.

Stage 2: Can I deal with this myself?

The simple answer is yes. However we believe that responding to an enquiry is a job for the professionals. HMRC are not always entitled to the information they have requested and are known to use an enquiry as a fishing expedition. Even when, as in most cases, all questions can be answered to HMRC's satisfaction the process is stressful and time consuming. HMRC set deadlines for the taxpayer to respond and it is important to ensure that HMRC's deadlines are met to avoid legal proceedings and higher penalties.

A full investigation can take years to reach a conclusion and involve hundreds of letters and documents.

Stage 3: Closing the enquiry

Eventually HMRC will agree the position and issue a closure notice. ►

The notice will explain either no further action will be taken or, where further tax is due, the amount and due date for that tax to be paid. Interest for late payment is also likely to be charged.

Where there is no tax to pay that will be the end of the matter and the file will be closed.

In more serious cases if significant mistakes have been found HMRC may seek to obtain some assurance from the taxpayer that everything has now been fully disclosed. This could be a statement of assets and liabilities, a certificate of full disclosure, or both.

Advice should be taken before signing either of these documents. If it is shown at a later date that the statements were inaccurate, sanctions would be levied relevant to the severity of the omission and prison could be in the picture.

Stage 4: Penalties

Closing the enquiry is not the end of the process: the next stage is negotiating any penalty.

HMRC's current penalty regime is based on behaviour. If the mistake was 'careless' the penalty starts at 30% of the tax, but this can be reduced to 15%. Where HMRC believes the behaviour was 'deliberate' penalties will range from 35% to 200%.

In some cases, depending on the circumstances, PEM have persuaded HMRC to suspend the penalty. A penalty suspension involves a negotiation to encourage a change of behaviour in the future.

Targets set must follow the SMART principle (specific, measurable, achievable, realistic, time bound). For example, submitting all future returns on time or putting in place a record keeping system.

Stage 5: Meeting HMRC's conditions

If a penalty suspension is agreed, a time frame of up to two years will be put on the conditions.

If HMRC is satisfied that the conditions have been met in full then the penalty can be cancelled. However, this is not easy. Where penalties are substantial, HMRC will expect documentary evidence to prove that the matter has been taken seriously and the mistake cannot reoccur.

At any time during the suspension period, and at short notice, HMRC can call for evidence that the conditions are being met. If the conditions have not been met the penalty suspension is cancelled and will be immediately payable.

The time involved in responding to even a relatively straightforward compliance check can be significant. Professional fees can be well into the hundreds of pounds and the more complex full enquiries can be into the tens of thousands. These fees will be payable whatever the outcome of the enquiry even when there have been no omissions.

Whilst we can't take away the stress of the enquiry itself, enquiry insurance can cover the fees and we will manage the whole process to keep stress to a minimum. ■



No one is safe from a tax investigation...

About us

Our experienced Private Clients team offers expert advice and support for all areas of personal taxation to suit your specific needs. Please meet our Private Clients team who will be happy to talk to you about any issues you may have.

For further advice, information or to feed back please do not hesitate to contact Sanchia Norris on 01223 728225 or email snorris@pem.co.uk

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