



Thursfields
CHARTERED ACCOUNTANTS

PayLessTax
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A Balm in Divorce Emotions

A separation/divorce is an emotive time for all concerned and presently the tax legislation has added fuel to the fire, potentially imposing a capital gains tax liability in the following circumstances:



▶ A married couple/civil partnership transfer assets after the end of the tax year in which they separate.

▶ More than 9 months after leaving the matrimonial home, the spouse who has left the property either transfers their share of it to the incumbent spouse or disposes of it to a Third Party.

▶ The spouse who left the house enters into a deferred sale agreement with the remaining partner, that on a later sale of the property, they will get a percentage of the proceeds.

From 6th April 2023 proposed radical changes are afoot:

▶ Separating spouses/civil partners may be given up to 3 years following the end of the tax year in which they separate to transfer assets without potentially triggering a capital gain. If the transfer forms part of a formal divorce agreement, then there will be no timeframe.

▶ Where Spouse A has left the home, whilst still retaining an interest in it, and, at a subsequent date, the property is sold, that Spouse can elect for any gain attributable to that disposal to be capital gains tax free. For this to be the case, Spouse B must still occupy the family home up to the point of disposal. Spouse A must not have elected for another property to be their main residence.

▶ Spouse A, having left the family home, transfers their interest in the property to Spouse B as part of a deferred sale agreement. The terms entitle Spouse A to a percentage share of the proceeds upon a subsequent sale of the house by Spouse B. Pre-April 2023 this capital receipt could result in a capital gains tax charge arising on Spouse A. **From April 2023, the deemed gain may be treated as though it arose at the time of the initial disposal to Spouse B thereby resulting in potentially no capital gains tax arising.**



TIP... If you are still trying to reach a settlement agreement with your estranged partner, consider the feasibility of delaying any asset transfers until after 5th April 2023. Please contact us if you need help.

VAT Intricacies re Land/Property

It can be a costly error ignoring the VAT implications surrounding land/property transactions, whether you are the vendor/purchaser, the landlord/tenant or the transferor/transferee.

► **Normally there is no VAT charged on the sale or rental of a residential property or a communal residential home or if the building is being used for charitable purposes.** The landlord or vendor might incur VAT on costs relating to the sale or rental of the property e.g. solicitors fees or ongoing maintenance costs. They may only be able to recover the VAT on those costs if they have built the dwelling themselves.

► Unless the sale is part of a transfer of a going concern, **if you sell a new commercial building within 3 years of it being built, then you would charge VAT at 20% on the sale price.** If the sale takes place after that date or if it is rented out then the starting position is that the landlord/vendor would not be able to charge VAT on the sale or the rent and would not be able to recover the VAT on any expenses incurred. However, in this latter case, they could make an election known as 'opt to tax'. This would mean they would charge VAT on the sale or the rent going forward enabling them to recover the VAT imposed on their expenses.

► If the purchaser/tenant is VAT registered and is going to be using the property for their own trading purposes then they may be able to claim back, in part or in whole, the VAT charged on the acquisition or the rent.

► If, however, the person acquiring the commercial property is intending to rent it out themselves, they need to consider whether to make the election to 'opt to tax' otherwise they will not be able to claim the VAT back on the costs of purchase. If made, they then need to charge VAT on the rent to their tenant.

► It is important to note that land taxes are charged on the VAT inclusive purchase price figure.

► **Where a vendor has made an 'opt to tax' election, this may be ignored in certain circumstances, such as where a housing association is involved or the buyer is intending to convert the premises into dwellings or communal residential use or they are intending to build a residential property on the land for their own non-commercial purpose.**

► You can revoke an 'opt to tax' election within the first 6 months of making it or after 20 years.

► If you are a VAT registered business which acquired trading premises costing £250,000 or more and you are intending to sell it on within 10 years of purchase, care needs to be taken that HMRC do not claw back some of the VAT recovered on the original purchase.



These are just some subtle nuances surrounding VAT and land/property. Look at the VAT implications in advance of any land/property transactions. We have VAT specialists to provide the appropriate advice if you need help.



Corporate Property Return Warning

► Does your company own an interest in a residential property?

► **Was that property worth £500,000 or more as at 1st April 2022 or, if later, the value at the time the company acquired it?**

► Did your company convert a property into a dwelling or build a new one, after 1st April 2022, which at the time of completion or first occupation, if earlier, was worth £500,000 or more?

If you answered yes to any of those questions you probably should be completing an Annual Tax on Enveloped Dwellings (ATED) return on a yearly basis. Depending upon the particular circumstances you might be liable to pay an ATED charge which could presently range from as low as £3,800 to as high as £244,750.

Many reliefs exist which could wipe out the ATED charge. For example:

► The dwelling is let out on a commercial basis to an unconnected third party.

► The property is part of a property trader or property developing business where the intention is eventually to sell it on.

► It is a farmhouse occupied by a farm worker or former long serving farm worker.

The vast majority of cases caught by the ATED legislation result in no ATED charge arising.

However, you still have to complete an ATED return to claim these reliefs. Plus the failure to submit the return on time can result in penalties being imposed. Even where the ATED charge is nil, the penalties could rack up to £1,600 if the return is over 12 months late.

If a business acquires an interest in a property, it should complete an ATED return within 30 days of acquisition. Where constructing a new build or converting an existing property into a dwelling then it is 90 days from the earlier of the completion date or the date first occupied. Then a Return should be completed on an annual basis by 30th April.

Example:

► TC Ltd acquires a residential property for £600,000 on 1st June 2023 to rent out on a commercial basis.

► The company should complete their 2023/24 ATED Return by 30th June 2023 and claim interim relief in the body of the return.

► If the property is retained as at 1st April 2024, they will need to complete a 2024/25 ATED return by 30th April 2024.

► This will continue to be the case each year whilst the property is held by TC Ltd

Under the ATED rules residential properties should be revalued every 5 years. If a business has a residential property which was worth less than £500,000 at 1st April 2022, it will need to revalue it again at 1st April 2027. If the dwelling is then worth £500,000 or more, the company would need to complete an ATED return by 30th April 2028, as regards the 2028/29 tax year, irrespective of whether or not there is an ATED charge to pay, otherwise penalties will ensue.

TIP...

Please contact us if you are worried you might be caught by the ATED legislation.



The Tax Clock is Ticking



The end of the tax year is fast approaching but before we link arms and burst into a chorus of Auld Lang Syne, you may want to action these considerations before it is too late.

Have you reviewed your national insurance (NI) history? Should you do so before 6th April 2023?

► In general, you need 35 NI qualifying years to obtain the maximum full state pension.

► **Each qualifying year presently adds an extra £275 to a person's annual state pension.**

► Review your NI history and see if there are any tax years in the past which did not qualify.

► **Where there are 'missing' years, up until 5th April 2023 inclusive, you can go back to 2006 and pay voluntary NI contributions for those years to count as qualifying ones. After April 2023 you can only look back 6 years.**

► The cost to make each year qualifying is currently £844. However, **based on average life expectancy beyond pensionable age, each full national insurance year would be currently worth £5,225 for men and £5,775 for women.**

Are you wasting the 2022/23 capital gains tax annual exemption (AE)?

► If not utilised by 5th April 2023, the AE of £12,300 will be lost.

► **Depending upon the asset sold, the potential AE tax saving is up to £3,444.**

► From 6th April 2023 the AE falls to £6,000 and then £3,000 from April 2024.

► **Do you have an asset pregnant with gain worth selling to make use of this AE tax saving?**

► **Perhaps you are married/in a civil partnership and own shares which you don't want to let go of just yet. In that case consider selling the shares pre-6th April 2023 and your spouse/partner buying them back on the same date. The buyback should be a separate transaction to that of selling the shares in the first place.**

► **On a subsequent sale of those shares there could be a further tax saving of up to £2,460.**

Quick reminders

► **Remember you can gift up to £3,000 in this tax year and it will immediately fall outside your estate for inheritance tax purposes.** If you have not made a gift in the previous tax year you can top that up to £6,000.

► **Do you have more than one employment? If so, is there a risk that you might be paying too much Class 1 national insurance? Depending upon the level of earned income, if it is going to continue into the 2023/24 tax year, you can approach HMRC to request that one or more of the employments only deduct NI at 2% as opposed to 12%.**

► **Consider topping up your pension prior to the tax year end.** If your total income sits between £100,000 and £125,140, the tax saving on a relief at source pension contribution is worth 60% (61% in Scotland). If you have children and your total income is between £50,000 and £60,000 a similar pension contribution could save you a high-income child benefit charge.



These are just some of the things you should consider before the tax year end. If you would like a personal year-end review, please contact us.



We are here to help

We can help you by ensuring that you're aware of the changes that will affect you, your family and your business. To find out more about the ways that we can help you, do not hesitate to contact us.

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