



Private Client

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**PKF FRANCISCLARK**

Chartered accountants & business advisers



## Capital gains tax -

new payment window for residential property gains

**From 6 April 2020, a payment on account of CGT arising on the disposal of UK and overseas residential property by UK resident persons will need to be made within 30 days of the completion of the disposal. Currently, for UK resident individuals, CGT is typically accounted for as part of the self-assessment tax return, with any tax payable falling due by 31 January following the end of the tax year in which the disposal took place.**

### The main changes are:

- All UK resident individuals disposing of residential property, on which a chargeable gain arises, will be required to submit a special payment on account return, confirming the disposal and tax payable, within 30 days of the completion of the disposal. No return is required where no payment on account is necessary, for example if the gain is fully covered by private residence relief.
- Any CGT arising as a result of the disposal will be payable within 30 days, bringing the payment date forward by between nine and 21 months, depending on the date of completion. It will be necessary for taxpayers to estimate the CGT rates applicable in order to calculate their CGT liability.

**HMRC is also introducing a reduction in the filing and payment window for SDLT from 30 days to 14 days for transactions completing on or after 1 March 2019.**

## What are the implications?

The implementation of the policy will pose several potential issues for taxpayers, and concerns have been raised with the government by the ICAEW.

With both returns and payment being due within 30 days of completion, there is concern that transactions occurring within the same tax year, but after the return period, will not be properly considered in calculating the CGT payable.

In the event of an overpayment, taxpayers who are required to complete a self-assessment tax return, could potentially have to wait until their tax returns have been submitted to receive a repayment. This is in contrast to taxpayers outside of self-assessment, who will be entitled to the repayment as soon as their computation is finalised.

The issue of repayments also presents further problems for taxpayers, particularly those completing their self-assessment tax returns well in advance of the 31 January deadline. There is a concern that any excess CGT paid may be used to offset any income tax liability arising in the same tax year, even if the income tax payment is not due for some time.

The taxation of property has become increasingly complicated, and as seen with the introduction of the 30 day window for non-resident CGT on UK residential property, it is evident that taxpayers are finding it ever more difficult to keep up with their increasing number of responsibilities.

It has also become apparent, as evidenced by the number of penalty appeals relating to non-resident CGT returns, that for many taxpayers the 30 day window is simply inadequate for collating all the necessary information in order to prepare a full and correct CGT calculation.

**In a world in which we are striving to make things simpler, this seems like an unnecessary complication of a system that didn't need fixing.**

If you have any queries on capital gains tax or the specific issues raised in this article, please contact your usual PKF Francis Clark adviser or the Private Client team in your local office.

# Personal service companies

**The use of personal service companies (PSCs) has been firmly in the spotlight following the introduction of new legislation. This includes intermediaries legislation in 2015 and off-payroll working in the public sector in 2017. In addition, a consultation on the treatment of off-payroll working in the private sector closed on 10 August 2018 and could be introduced from April 2019. This could impact all businesses.**

## Why is HMRC so keen to tackle their use?

Legislation referred to as 'IR35' after the original Budget note, was first introduced in April 2000 to identify workers who - were it not for their PSC - should be treated as an employee of their client. The use of a PSC suited the individual who would generally draw their income as a mixture of salary and dividend at much lower tax rates and, more importantly, without paying any national insurance (NIC). For the client they were no longer paying employers' NIC (13.8%) so their overheads were greatly reduced and they did not have to offer any statutory payments such as holiday pay or redundancy.

Where a PSC is caught it is required to calculate a deemed salary and pay tax and NIC (employees' and employers') on this amount, effectively leaving the individual in the same position as if they were employed by their client.

However, despite the legislation being in place for over 18 years HMRC claims that only 10% of those caught are correctly reporting their income and by 2022/23 this will result in a deficit of £1.2billion in the private sector, mainly due to the fact that HMRC has previously had no way of identifying these companies and has until recently had a poor record in the courts at arguing the position.

This all changed following the recent BBC case where Christa Ackroyd, the presenter of Look North, lost her appeal against HMRC's decision that she was caught by IR35 and is now facing a tax bill of £419,151 for the seven years covering 2006/07 to 2012/13.

### **The key identifiers of whether a PSC is caught by IR35 are:**

- Mutuality of obligation - is there an obligation to provide work and for the worker to do this?
- Control - does the engager control the worker?
- Personal service - is the worker obliged to personally provide their services?

### **Other indicators include:**

- Whether the worker provides their own equipment
- Whether they hire their own helpers
- What degree of financial risk is taken
- What degree of responsibility for investment and management exists
- Whether there is an opportunity of profiting from sound management

Ms Ackroyd was held to be an employee as the BBC had ultimate control over her as they had the power to direct the work, and she had a seven year contract which the tribunal felt was effectively a full time job.

With the rules expected to be introduced shortly for off-payroll working in the private sector, now is the time to review contracts between you and your clients and suppliers to establish whether there is a risk that IR35 should apply.

**If you have any queries on personal service companies or the specific issues raised in this article, please contact your usual PKF Francis Clark adviser or the Private Client team in your local office.**



## Inheritance tax on UK properties held in offshore structures

It used to be common practice for non-UK domiciliaries to hold UK residential property through an offshore company or partnership, with the result that the asset was excluded property for inheritance tax (IHT) purposes. Legislation was introduced last year, affecting all chargeable events on or after 6 April 2017, which removes excluded property status from such structures to the extent that the value in them is attributable to UK residential property, or to relevant debt. The table below summarises the position before and after 6 April 2017.

IHT	Own name	Offshore company	Offshore trust	Offshore property fund
Up to 5 April 2017	•		•	
From 6 April 2017	•	•	•	•

A charge under the new rules will occur on any of the normal IHT chargeable events, such as death, a lifetime transfer to a trust, or periodic or exit charges in trusts.

The rules are complex, but - broadly - if more than 5% of the offshore company or offshore partnership's value is represented by UK residential property, that part of the

value of the shares will no longer be excluded property and IHT will apply. Charges are subject to the normal rules, so for exit charges and periodic charges arising on offshore trusts over the next nine or ten years, the IHT charge will be reduced to take account of the number of complete quarters which elapsed before the new rules applied.



If you have any queries on inheritance tax or the specific issues raised in this article, please contact your usual PKF Francis Clark adviser or the Private Client team in your local office.

The position is likely to be even more complex where the company also holds foreign assets (which will continue to be excluded property), or there is debt. In the case of foreign assets, an apportionment is required on a 'just and reasonable basis' of the value to be attributed to the company's shares. However, any valuation will also need to take into account other relevant factors such as discounts for minority interests, and whether the related property rules apply to increase the value of a minority holding, where spouses and other family members also hold shares. So one might hold (say) a 90% shareholding, but the value of that shareholding comprises a number of assets, rights, etc. and the value attributable to UK residential property is less than 5% of that total. No IHT charge would arise on that holding; however, it would be important to watch value fluctuations, to ensure that the 5% limit is not breached unwittingly.

To discourage planning activity, there is a two year 'tail' period where - if shares in the offshore company are disposed of while the company still holds the property, or relevant debt - the IHT charge can still apply. However, if the company sells the UK residential property outright but you continue to hold the shares, the two year tail does not apply.

Where a loan is made for the purpose of acquiring, maintaining or improving UK residential property and is used for that purpose, the loan itself is regarded as UK property and not excluded property. Similarly, the provisions will also apply to loans used to acquire an interest in a close company (or partnership) which uses the money for the same purpose. The new provisions apply an IHT charge to the loan itself by causing the loan to be regarded as non-excluded property. For these purposes, a loan includes an acknowledgement of a debt, e.g. leaving the purchase price outstanding as an IOU and it is irrelevant that the loan may be on commercial terms.

The rules apply equally to money or money's worth made available as security, collateral or guarantee for a relevant loan. Even when the loan is repaid, it will be two years before the loan ceases to be excluded property.

Looking to the future, with the Government seeking to raise funds for public services, and in view of the changes to non-resident capital gains tax (CGT) next year which will see commercial property in the UK brought within its scope for the first time, as well as UK property held by non-close companies, it appears there is a strong likelihood of UK commercial property being brought into the scope of UK IHT, as well as CGT, in the near future - regardless of ownership structure.

# Furnished holiday lets

## - inheritance tax relief update

Until 2008 many owners of furnished holiday lets thought their properties would qualify for 100% relief against IHT. Changes to HMRC's guidance and three subsequent cases concerning holiday properties left many owners concerned that their holiday let businesses may not be able to survive a death uninterrupted. A recent case has provided some hope, but the bar is still set high in the race to achieve full business property relief (BPR) for IHT purposes.

A recent case concerning a Mr Graham will bring some hope to owners of holiday accommodation for BPR to be available where a very high level of services are provided. This case involved a holiday let business on the Isles of Scilly which consisted of four flats/cottages and two guest rooms which were occasionally used as a bed and breakfast.

What became evident throughout this case was the great deal of time and effort that Mrs Graham and her daughter devoted to providing a unique holiday venue (known as 'Carnwethers') and experience for their guests. The number of hours of work per annum (7,200 estimated hours) was similar to the level of input when the business used to be run as a country hotel.

In previous cases it has been noted that holiday accommodation has a wide spectrum ranging from luxurious hotels (which are clearly trading and qualify for relief against IHT) to holiday lets with little or no input from their owners (which are mainly held as investments and do not qualify for relief on death). Three previous holiday let cases have all tried and failed to secure IHT relief.

### Some points which have been highlighted from recent tax cases include:

- The need to look at the business 'in the round' over a period of time. This includes considering turnover, profits, expenditure and time spent. However, it is widely acknowledged that it can be difficult to compartmentalise the business into either investment or non-investment activity.
- Would an 'intelligent businessman' view the holiday lets as mainly the holding of investments?
- A property may be held as an investment even if the person holding it has to take active steps in connection with it. A landlord would be expected to carry out incidental management and maintenance work, as well as find tenants, so it is only services over and above this which count.
- In a previous case, which involved the running of eight holiday cottages and two staff flats in Cornwall, where the services to guests were above the standard level for self-catering cottages and included arrangements with a nearby hotel and an on-site caretaker, it was held that BPR was not available.



## So what was different in relation to this case?

The provision of a pool, sauna, bikes, a games room, welcome packs, cream teas, well-maintained gardens and, in particular the personal care lavished upon guests distinguished it from other 'normal' actively managed holiday lettings businesses; and the services provided in the package more than balanced the mere provision of a place to stay.

Carnwethers was operated more like a family run hotel than a second home let out in the holidays. However, this case was far from clear cut and the executors only just managed to dip across the line with a photo finish, into the hotel end of the spectrum. The Judge referred to it as an 'exceptional case'. It has been appealed by HMRC, so we will need to wait for the next episode in this long running drama.

Where it is not an option to provide services akin to a family run hotel then other options could be considered, such as whether a lifetime gift of the holiday lets may be advantageous to maintain family wealth and ensure succession of the business. Subject to meeting certain conditions, CGT reliefs may be available to facilitate this strategy.



If you have any queries on IHT for holiday lets, please contact your usual PKF Francis Clark adviser or the Private Client team in your local office.

# How diversified are your investments?

Gary Quick, Director  
PKF Francis Clark Financial Planning



Ten years on from the global financial crisis we can look back and begin to comprehend the effect that unprecedented Central Bank interventions have had around the world. The printing of money and associated injection of capital into economies and markets, known as quantitative easing (QE), has seen most asset classes rise together in the last few years.

Historically, different asset classes such as equities, bonds, commodities and property have displayed a degree of negative correlation e.g. when equities are going up maybe bonds are going down in value. This uncorrelated behaviour and associated volatility has rarely been present whilst Central Banks have been pumping cash into the global markets. This has provided a sweet spot for investors that has lasted for an abnormally long period of time.

With the artificial stimulus of QE coming to a close and global geo-political events, especially around the US & UK, becoming potential headwinds to economic conditions moving forward, we could be about to see a return to volatility and greater deviation of returns in asset classes.

If this return to more normal conditions does occur then diversification of your investment portfolio will be key to reduce the risk of one asset or geographical region having an abnormally negative effect on your investment returns.

Alongside diversification of your portfolio, regular rebalancing of the asset and geographical mix of the portfolio is key to maintain diversity and retain the correct risk profile. If equity

markets were to have a final flurry at the end of an economic cycle and grow much faster than other parts of your portfolio this would lead to a distortion of risk, leaving you vulnerable to a sudden downturn. In this case regular rebalancing would see equities being sold (banking some profits) and other assets being bought that were lower risk thus sheltering you from a sudden shock.

As well as diversity at an asset class level you should also be concerned with diversification geographically. The same issues apply here, for example, a particular region may be doing particularly well and this is reflected in the price of equities quoted in these markets' stock exchanges, whereas another region may be struggling. If your portfolio has exposure to both regions then it will become skewed as one grows faster than the other thus increasing the portfolio risk.

What should investors be considering now? In my opinion, we are at a potential inflection point where the global economy has to deal with the withdrawal of QE at the same time as many geo-political issues are simmering. This suggests that investors would be well advised to review their portfolios to examine the level of diversification and overall risk inherent in their portfolios. If no rebalancing has taken place in recent times then this should also be considered now.

Globalisation has made the world a more dynamic but also more complex place with active oversight and attention now being essential for all investment portfolios.

**PKF Francis Clark Financial Planning can provide advice on portfolio diversification; please contact your local team if you require further advice.**

EXETER	NEW FOREST	PLYMOUTH	POOLE	SALISBURY	TAUNTON	TORQUAY	TRURO
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