

DO IT BY 5 APRIL! YEAR-END TAX PLANNING

What can you do to save tax before 6 April 2010?

Here are some headline items which are covered in more detail below:

- Making the most of tax-efficient saving opportunities – a pension contribution* can provide an instant return on your capital of 67%!
- Reducing the tax cost of company cars;
- Minimising income tax and National Insurance costs in your family business;
- Buying business equipment, plant etc – use your annual investment allowance;
- Saving capital gains tax by: entrepreneurs relief;
- Reducing inheritance tax on your estate.



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In addition to the usual planning measures, those who will be affected by the increased tax rate of 50% and/or the loss of personal allowances after 5 April 2010 (affecting those with taxable income exceeding £100,000), can take further pre-emptive action.

This guide highlights a range of planning opportunities to consider before 6 April 2010. Please contact us to discuss the following:

Tax efficient saving for the future

Pension contributions made on or after 'A-Day' (6 April 2006) are no longer limited to a fraction of earnings. Many individual can make unlimited contributions*, and tax relief is available on contributions of up to the full amount of their relevant earnings or £245,000 (the annual allowance) if lower. To reduce your 2009/10 income tax liability, individuals must pay pension contributions by 5 April this tax year.

If instead of you paying pension contributions* out of post- NI (National Insurance) income, the employer makes the pension contributions*, the contributions will be free of NI (with a typical saving of 13.8%).

Employers are able to pay unlimited contributions* in respect of employees; however excess 'uncommercial' contributions for 'controlling directors' and their relatives (or even friends according to HM Revenue & Customs!) may not be fully tax deductible. *Additionally, 'over-funding' can lead to penal tax charges, and where funding is being maximised you need to watch 'pension input periods'.* So speak to us before any large contributions are made. Consider paying Stakeholder Pension contributions of up to £2,880 (net of 20% tax) for children, grandchildren, and others with low or no earnings aged under 75.

Employees entitled to bonuses, which have yet to be paid, should consider entering into 'salary sacrifice' arrangements* (more details below (see *Employees' benefits*)). ***This entails wholly or partly giving up a bonus in return for an employer pension contribution*. This will save National Insurance. Advice should be sought to ensure that the salary sacrifice is tax effective.***

Tax on chargeable events on a life assurance bond (for those not normally subject to 40%), can often be avoided by making a comparatively small pension contribution in the same tax year.

Are you saving enough for your retirement? Ask your pension provider for a pension forecast, and put together a forecast of your spending needs based on what you are spending now. Then you will be able to judge if you are saving enough.

****Following the attacks on 'high-earners' in the 2009 Budget and the 9 December 2009 Pre-Budget Report (the 'anti-forestalling measures'), anyone whose 'relevant income' [that on which the individual is charged to income tax (including employment income less allowable expenses plus any post 21 April 2009 salary sacrifices, trading income and other taxable income) less available losses and other reliefs, but with a deduction for personal pension contributions limited to £20,000] is £130,000 or more (in 2009/10, or the previous two tax years), should seek advice before paying (or having paid on their behalf) gross pension contributions in excess of £20,000 in 2009/10 (apart from regular contributions as existed on 22 April 2009), as their pensions tax relief may be restricted to 20% by the 'special annual allowance charge'.***

It seems that the further restrictions on tax relief on 'high-earner' pension contributions due to commence in 2011/12, will be even more restrictive than the 'anti-forestalling measures'. So it makes sense to maximise pension contributions that attract the full 40% tax relief in 2009/10.

Tax efficient investments

For those aged under 50 in 2009/10 the maximum contribution to an ISA for 2009/10 is £7,200 (or £3,600 for cash only ISAs). Investors who will be aged 50 plus by 5 April 2010 can deposit up to £10,200 into their 2009/10 ISA, up to £5,100 of which can be in cash. The investment must be made on or before 5 April 2010. (From 6 April 2010 all investors are entitled to the increased limit of £10,200 (£5,100 for the cash element)).

Consider the annual limits for Venture Capital Trust (VCT) (£200,000 - 30% income tax relief) and Enterprise Investment Scheme (EIS) (£500,000 - 20% income tax relief) investments. In the case of EIS it is also possible to subscribe for shares in 2009/10 and treat those shares as issued in the previous tax year, thus attracting relief in excess of the £500,000 investment limit for 2009/10. EIS can also shelter capital gains (most useful where little or no taper relief was available on pre 6 April 2008 gains).

With capital gains tax being at significantly lower rates than income tax, consider investing for growth rather than income.

Investing within a personal portfolio bond, will enable the investor to manage the timing of taxable income, which could mitigate the 50% tax charge.

Employees

The car fuel benefit charge is based on a car's CO₂ emissions, and the taxable benefit can vary from £1,690 (very low emission cars) to £5,915.

The fuel benefit is based on the fuel rate multiplier and the CO₂ emissions. It is currently £16,900 and will increase to £18,000 in April 2010.

The current fuel benefit on a diesel car with CO₂ emissions of 235g is £5,915. The tax on this fuel benefit is now £2,366 (£197 a month). At this level of cost, fuel provided for private use in a company car may not be tax efficient. If it is inefficient this tax year, reimburse the full cost of the fuel to your employer. To prevent the tax charge you must be required to reimburse the fuel costs as well as actually reimbursing in the same year. If paying tax on private fuel is likely to continue to be inefficient, terminate the arrangement before 6 April to avoid having to consider the question of reimbursement next year.

The car benefit of a petrol car with emissions of 120g or less is only 10% of the list price (13% for a diesel car). These percentages apply only until April 2012, when the 10% (13%) rate will apply to cars with emissions of up to 99g/km. More cars are being manufactured which meet these low targets. So a car costing £18,000 qualifying for the 10% rate will have a taxable benefit of only £1,800 per annum. Owner managers might like to consider 'second cars' with CO₂ emissions below 110g – the scale benefit will be 10% or 13% (until April 2012 when it will be 15% or 18%), but additionally for CO₂ emissions below 110g, a first year business tax write-off 100% is available. Salary sacrifice arrangements (see below) may also be suitable for such cars.

Under salary sacrifice arrangements an employee gives up part of his salary in return for (typically) the employer making pension contributions on his behalf. These payments (employer pension contributions) will be free of National Insurance. Many other benefits (eg childcare vouchers) can be provided under the salary sacrifice arrangements. In this case, instead of the employee paying for childcare out of post tax (and NI) earnings, the employer can provide vouchers, saving tax and NI (the employee can be provided with vouchers of up to £55 a week free, which saves £41 in every £100 in tax and NI for the higher rate taxpayer). Childcare vouchers can also be used for the 'boarding' component of school fees until 1 September following the child's 15th birthday (or 16th birthday if disabled).

Employers can now pay employees £3 a week tax free where they work from home as part of their employment conditions. This can be paid weekly, monthly or even as a lump sum. Employees can claim a higher amount where this can be justified.

An employee who is due a bonus after 5 April 2010, which will be taxed at 50%, could save tax by being paid that bonus before 6 April 2010.

Family business

Generally, payments to a spouse or other family member (with no other income) providing services to a business or company will be free of tax and NI provided no more than £5,715 is paid in 2009/10. However, to achieve the full NI savings the earner should be paid monthly, unless they are a director (who could be paid in one lump sum by 5 April 2010).

A salary of £5,715 pa (payable monthly) to the spouse in 2009/10 will provide the usual social security benefits such as qualifying years for the state retirement pension, while saving a total of £2,343 in income tax and NI for a 40% taxpayer (whose business is not operated via a company).

Shareholder/directors of companies can save NI by taking dividends instead of a bonus. Payments of dividends must comply with company law, so companies will need to ensure they have sufficient reserves to pay them and also be prepared for a decline in trading results in the latter part of an accounting period.

Shareholder/directors who will be affected by the 50% tax rate in 2010/11, could consider paying substantial dividends by 5 April 2010. This may require lending the money back to the company to provide working capital. You can charge commercial rate interest for the loan. The interest cost is an allowable expense for a 'close company' (most private companies are 'close'). This is a tax efficient way of extracting profits.

It may also be possible to use substantial dividends to pay off your mortgage, and to borrow funds to lend to the company. Thus one (non-tax relievable) loan, will have been replaced by another which attracts tax relief.

Unincorporated businesses operating accounting periods ending late in the tax year (eg a year end of 31 March 2010), should consider advancing income, or delaying expenditure to pay tax at 40% rather than 50% (where applicable, and where advancing/delaying will not be effectively cancelled out by accounting treatment).

Buying business assets

The purchase of plant or equipment just prior to the end of the current accounting year will usually mean that the allowance is available a year earlier than would have been the case, had the purchase had been made just after the year end.

Your business has an annual investment allowance of £50,000. This allowance is shared between associated companies/businesses but you can decide how much of the allowance each business receives.

There are also allowances available at 100% of cost for energy saving plant and machinery. So if you are buying a new boiler or air conditioning unit for business premises, you should check the list at www.eca.gov.uk to see if it qualifies.

Low emission cars, as well as benefiting employees through a lower benefit charge, also benefit the business as those with CO₂ emissions of no more than 110g/km attract a 100% tax write-off in the year of purchase.

For cars acquired by the business from April 2009 the capital allowances available depend on the CO₂ emissions. If the emissions are no greater than 110 g/km the car will attract an immediate 100% tax write down; if the emissions exceed 110g/km but not 160 g/km the car attracts a 20% writing-down allowance in the general pool. Cars with emissions exceeding 160 g/km are dealt with in a special pool attracting writing-down allowances at 10% per annum.

Unincorporated businesses operating accounting periods ending late in the tax year (eg a year end of 31 March 2010), should consider delaying capital expenditure to save tax at 50% rather than 40% (where applicable).

Capital gains tax

Entrepreneurs' Relief is available on material disposals of business assets. The maximum gain to which the relief can apply is £1million per qualifying shareholder. This is a lifetime limit (starting on 6 April 2008), you can make several disposals during your lifetime, and as long as the lifetime limit is not exceeded, each will benefit from the relief. The relief produces a net tax rate of 10% on disposal.

There is a restriction in the relief available for a property let to the business, where rent is being paid. If your business is in this situation contact us for further advice.

If you are thinking of disposing of your business do contact us for more information about qualifying for Entrepreneurs' Relief.

Capital losses on the disposal of shares in an unquoted (or AIM listed) trading company, where you *subscribed* for the shares, can be treated as a loss which reduces your income tax liability.

Realise gains and losses (on shares and unit trusts) to take advantage of the annual exemption of £10,100 for 2009/10. If retaining the shares is a sound investment strategy, consider reacquiring them in a different capacity e.g. in an ISA, a pension scheme or by your spouse. Remember it is no longer tax-effective to sell on one day and buy back the next (*'bed-and-breakfasting'*) – but it is possible for the other spouse to repurchase on the same day, or to repurchase within an ISA, thereby minimising exposure to fluctuations in values. Otherwise, you must not repurchase until after the following thirty-day period has expired. *Care is now required, when bed and breakfasting shares to create losses, due to general anti-avoidance legislation – you may wish to seek advice before taking this route.*

There is concern that capital gains tax rates could increase from 6 April 2010. Therefore realising gains by 5 April 2010, and realising losses later on could be a useful strategy.

Other husband and wife planning

Consider transferring income-producing assets to a spouse not currently utilising their personal allowance, and/or lower rates of tax. Instead of you paying tax on interest income at 40% your spouse may pay nil tax or 20% tax.

Consider transferring assets prior to sale to utilise each spouse's annual capital gains tax (£10,100) exemption. *See above re bed-and-breakfasting.* To maximise Entrepreneurs' Relief transfer shares to a spouse who is employed by the company and/or a director or the company secretary. Once they have held an interest of at least 5% for one year, they will also be entitled to Entrepreneurs' Relief.

Timing of income

To make the most of tax-free allowances (and lower rate tax bands) take steps to defer or accelerate income. Possible actions include:

- closing a bank account in order to crystallise the receipt of interest;
- advancing or deferring a salary payment or a dividend from a family company (but paying a dividend before 6 April, is likely to advance the tax payments by a year);
- make a distribution from a discretionary trust;
- realising life insurance gains (it may be possible to avoid paying any tax by making a much smaller pension contribution in the same tax year).

But consider the impact on Working and Child Tax Credits of changing the timing of income.

Giving

It is no longer necessary to make cash donations under the Gift Aid scheme by 5 April in order to obtain higher rate relief in 2009/10. You can elect that later donations made before filing your 2009/10 tax return, are treated as paid in 2009/10, provided you file your tax return by 31 January 2011.

Gifts of quoted shares, units in unit trusts, and real property should be made by 5 April 2010 in order to obtain income tax relief this year (there is no carry back facility). For a gift to be fully effective everything necessary to transfer ownership/title must have been done.

Additional charitable donations can help those marginally affected by the pension 'anti-forestalling measures'. It is also possible to carry back a gift aid (cash) payment to the previous tax year to achieve the same result.

Inheritance tax

Consider making use of the £3,000 annual exemption, together with the same amount brought forward from last year if not already used. Remember that each spouse has an exempt amount of £3,000 per annum.

Consider making use of the exemption for normal gifts out of income.

Consider the use of the IHT 'nil rate band' (currently £325,000) by making gifts now. You will be able to see the benefit of these gifts to your family members and they will escape IHT in full if you survive seven years.

It is now possible to transfer the unused 'nil-rate band' between spouses. This eliminates the need for nil rate discretionary trusts for many individuals. Wills containing arrangements to utilise the nil rate band on the first death should be reviewed.

There are a number of investment arrangements which can assist in reducing IHT. Some of these will achieve reductions within as little as two years – ask us for further details.

Finally WILLS – if you don't have will or your existing will is very out of date, you really ought to take some action now. Dying without a will can lead to delays in dealing with your estate and your wealth may not go to the people who you think deserve it.

NB. References to husband, wife, spouse etc include members of Civil Partnerships.

This Note is intended to act only as a guide and cannot be fully comprehensive. Each individual and/or business should consider their own position and if necessary consult a professional advisor. Therefore Horwath Clark Whitehill LLP does not accept any liability for any action taken or not taken on the basis of this Note.

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