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Registered by The Institute of Chartered Accountants in England and Wales to carry out company audit work

Elliott Bunker Ltd

Business News

Charity begins in the community…

Here at Elliott Bunker we pride ourselves on supporting our local community, by taking an interest in activities happening on our doorstep and giving what we can back to those who in turn help make our city what it is.

With this in mind we're donating £100 each and every quarter to a local charity or community project, chosen individually by members of staff. This quarter the charity is Yatton & Congresbury Wildlife Action Group and has been chosen by Geoff Dring, from our Audit Team.

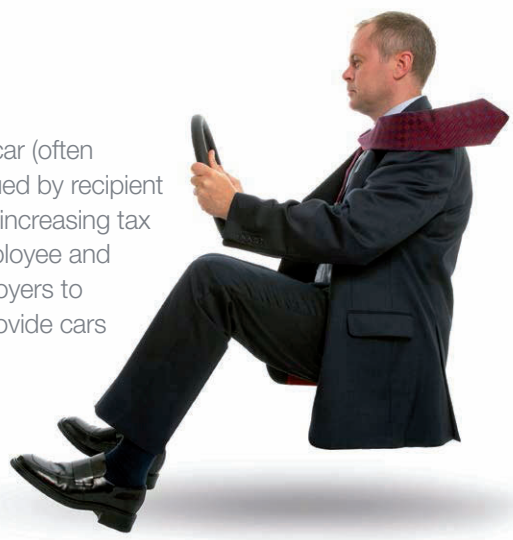
Yatton & Congresbury Wildlife Action Group aims to create and maintain nature reserves locally, improve biodiversity and raise interest in nature.

The charity donations initiative is supported by all members of the Elliott Bunker team. For more information about what we're doing to support our local community and the charities and projects that play such vital roles, visit www.elliottbunker.co.uk

AUTUMN 2013

Chasing car tax

The provision of an employer provided car (often referred to as a company car) is still valued by recipient employees and directors. However, the increasing tax and national insurance costs to the employee and employer respectively have driven employers to consider alternative arrangements to provide cars to their employees.



In a recent case a company entered into leasing agreements with its employees. The employees paid a market rate rent for the exclusive use of the car. The company also reimbursed employees for business mileage travelled at the standard HMRC rates for employees who use their own car for business purposes.

HMRC argued that even though market rate rents were being paid by the employees, the arrangements still gave rise to a taxable benefit as the car was essentially being provided by the employer. If this was the position then the mileage rates paid would also be considered excessive with a resulting tax charge to the employees. This is because the acceptable tax free mileage rate for an employer provided car is much lower than the standard rates for an employee owned car.

The company appealed to the First Tier Tribunal on a number of grounds. Firstly, they argued that the car benefit charge can only apply if a car is made available to an employee, without any transfer of the property in it. The Tribunal agreed that as a result of the lease agreements there was a transfer of the property in the cars to the employees. Secondly, the car benefit charge can only apply if there is an actual benefit provided to an employee. As the employees were paying market rate rents for the cars there was no benefit provided to the employees. The Tribunal agreed with these arguments.

As regards the contention that the mileage rates were too high as the cars were company cars, the Tribunal did not agree with HMRC as the cars were not company cars. As a result the Tribunal allowed the taxpayers' claims for relief from tax for the mileage allowance payments.

The key tax decisions made in this case are being appealed by HMRC to the Upper Tribunal so whilst the first round has gone to the taxpayers the fight is not yet decided.

If you would like to talk through any concerns you may have surrounding the provision of company cars to employees please do not hesitate to contact us.

Tortuous travel…

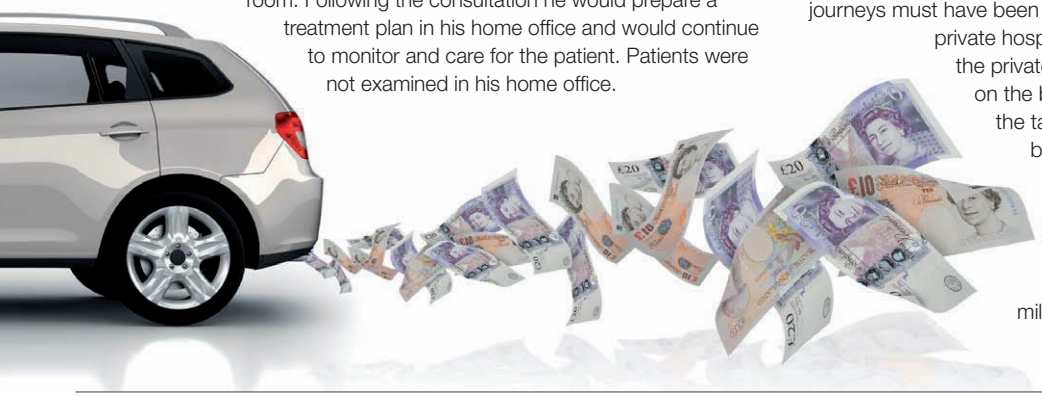
Over recent years the issue of the self-employed individual claiming tax relief on travel expenses has been a constant area of challenge by HMRC. This is particularly the case where the individual undertakes both work at home and is considered to have another business base. A recent case won by HMRC illustrates that this is very much a live issue, particularly for the self-employed professional.

The taxpayer, a medical professional, has so far suffered a 7 year enquiry from HMRC and 3 Tribunal hearings over his business mileage claims. The Tribunal accepted that the taxpayer has a dedicated office in his home which is necessary for his professional activity. However, it did not accept that home should be treated as the starting point for calculating business mileage for regular and habitual journeys in connection with his private practice work.

The facts

The taxpayer specialises in the healthcare of elderly people and is employed at two hospitals in South London. Additionally, he holds weekly outpatient sessions at two private hospitals. He maintained that his headed paper showed his home as the correspondence address and that paperwork was sent to him there by health insurance companies. Emails were accessed at home as well.

He would generally undertake a fact finding consultation at either the patients home or at the private hospitals where he would hire a consulting room. Following the consultation he would prepare a treatment plan in his home office and would continue to monitor and care for the patient. Patients were not examined in his home office.



The issues

HMRC enquired into the taxpayer's typical weekly journeys to support his 65% business mileage claim. Two regular journeys were identified by HMRC:

- the mileage between the NHS hospitals and the private hospitals and
- the mileage from home to the private hospitals.

HMRC sought to disallow these as business journeys and proposed to reduce his business mileage claim to 6%.

The taxpayer's argument was that the business base should be regarded as where the business was run and not the place where the professional services were carried out. He stated that his home was clearly the business base so there was no non-business purpose in the travel between the home and the private hospitals.

HMRC argued that travel to and from home and a place of work is not generally tax allowable, because the journey cannot be regarded as wholly and exclusively for business. The travel was not to various temporary sites as he was delivering his professional services at fixed sites on a regular basis.

As indicated earlier, although the Tribunal did accept that the taxpayer had a place of business at his home they considered that the travel from home to the private hospitals was not wholly and exclusively for business purposes. Rather, there was a dual purpose to the journeys as part of the object of the journeys must have been to maintain a home in a separate location from the private hospitals. The journeys between the NHS hospitals and the private hospitals were also regarded as not allowable on the basis that the object of the journey was to put the taxpayer into a place where he could carry on his business away from his place of employment. As a result, the travel was not an integral part of the business itself.

If you are concerned that the decision in this case could affect your claims for business mileage, please contact us for further advice.

No relief for property business

The availability of Business Property Relief (BPR) for inheritance tax (IHT) is critically important as it potentially saves an individual 40% IHT on death (or for relevant trusts the 6% ten year anniversary charge). However, a key point in securing this valuable relief is that the business (unincorporated or company) must not be 'wholly or mainly of making or holding investments'. This requires a business to demonstrate that it is either a trading business or at least that the majority of its activities and/or assets are classed as trading rather than investment(s). Two important tax cases on BPR this year have focused on the specific issue of the property business.

The first concerned whether a single dwelling commercially rented out as a furnished holiday letting (FHL) qualified as a trading business. In that case the Upper Tribunal decided that such lettings are essentially investment businesses and therefore no BPR was available. The result being that 40% IHT became due. The second case considered the same question on the commercial letting of a large office building called Zetland House in London.

In the second case the building had been remodelled to provide smaller office units with more facilities and services to tenants to attract occupants particularly from computer, media and high tech businesses. This had resulted in the gross rent and service charges rising to around £2.4m, four times the level received ten years earlier. The building had a restaurant, gym, cycle arch, Wi-Fi, portage, 24 hour access, meeting rooms, media events, outdoor screens for viewing football matches and film shows as well as an art gallery area which therefore required additional staff to run it.

The problem

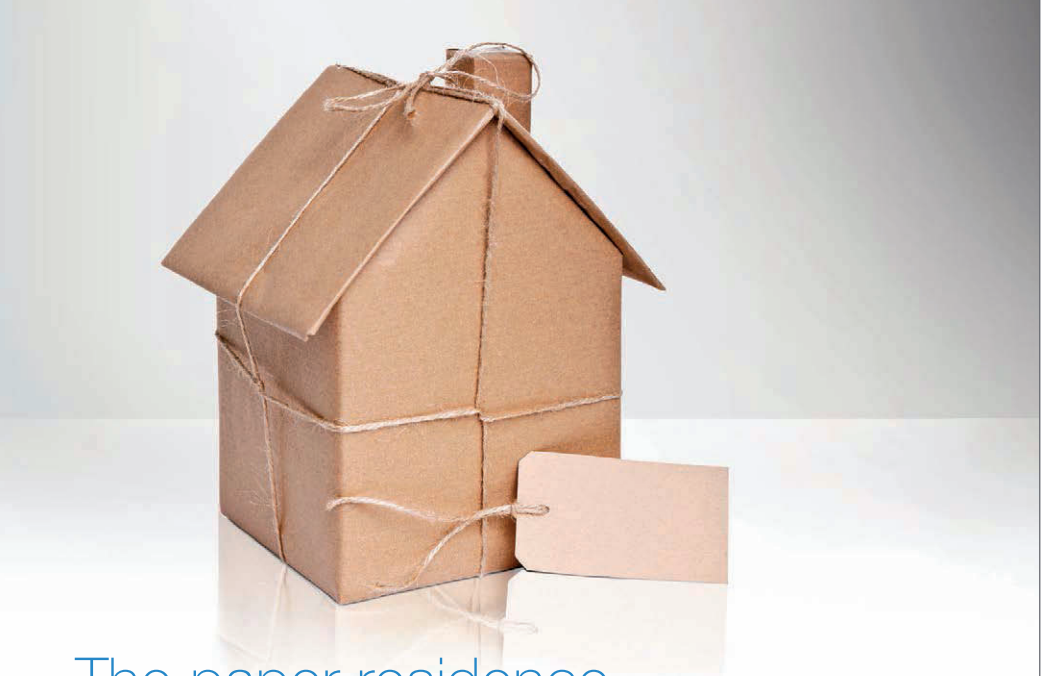
The HMRC stance in both cases can be summarised using the wording in the judgement from the FHL case 'that the holding of land in order to obtain an income from it is generally to be characterised as an investment activity'. However, other tax case law exists which considers that there is a spectrum consisting 'at one end of the exploitation of land by granting a tenancy coupled with sufficient activity to make it a business' and 'at the other end … while land is being exploited, the element of services means that there is a trade, such as running a hotel or a shop from premises.'

The lack of clear HMRC guidance over the years as to what activities and /or services are required to constitute a trade explains why there is a growth in these types of cases as both HMRC and taxpayers challenge the boundaries.

The decision

The Tribunal acknowledged that with Zetland House, the business activity was not simply the receipt of rent from let property. Services were being provided and other activities were being undertaken. The question was whether those activities elevated the business from mere ownership or investment into a business which would qualify for BPR. After considering in detail all of the services and facilities at Zetland House the Tribunal noted that the provision of services and facilities to a property business will usually be ancillary to the main investment business and so determined that overall it did not qualify as a business for BPR. This is because the purpose of the activities is largely to improve the building and its fabric and to keep the occupancy rates high. The services provided were mainly of a standard nature aimed at maximising income through the use of short term tenancies.

If this is an area which may affect you please do contact us for further information and guidance.



The paper residence

The capital gains tax (CGT) exemption for gains made on the sale of your home is one of the most valuable reliefs from which many people benefit during their lifetime.

However, only a property occupied as a residence can potentially qualify for the exemption. For example, an investment property in which you have never lived would not qualify. The term occupied as a residence requires a degree of permanence so that living in a property for say, just two weeks with a view to benefiting from the exemption is unlikely to qualify. In practice HMRC look for the 'quality rather than the quantity of residence' and look to establish that the dwelling must have become the owner's home. Examples can include:

- utility bills demonstrating usage
- financial correspondence
- entertaining friends or family in the property
- moving own furniture, pictures or ornaments into the property
- undertaking work on the property.

But what is the position if you have more than one residence?

It is increasingly common for people to own more than one residence. However, an individual can only benefit from the CGT exemption on one property at a time. In the case of a married couple (or civil partnership), there can only be one main residence per couple. Where an individual has two (or more) residences then an election can be made to choose which should be the one to benefit from the CGT exemption on sale. Note that the property need not be in the UK to benefit although foreign tax implications may then need to be brought into the equation.

Get the paperwork right…

The election must normally be made within two years of a change in the number of residences. Choosing which property should benefit is not always easy since it depends on which is the more likely to be sold and which is the more likely to show a significant gain. Missing the two year time limit can mean that HMRC will decide which property was the main residence, on any future sale.

Deemed residences

One area to watch out for is 'deemed residences'. Take for example Kevin who lives in Essex and owns a house there, but gets a new job in Leicestershire. He rents a property in Leicestershire on an assured shorthold tenancy and returns to Essex every weekend.

Kevin has an interest in the property in Leicestershire as he has a tenancy and needs to consider making the election. If Kevin had only been occupying the house in Leicestershire under licence for example, being given permission from say a friend, or if he had been staying in a hotel, he would not be treated as having an interest and an election would not be necessary.

It is quite likely that Kevin will not have appreciated the fact that he should make an election. The issue then is based on the facts, which could mean that the Leicestershire property is determined as his main residence. The result of this would be that the only residence likely to give rise to a gain on disposal would not attract relief. However, help may be available from HMRC using a concession which allows an extension to the two year time limit in circumstances where:

- an individual has or is treated as having more than one residence and
- their interest in each of them, or in each of them except one, has no more than a negligible capital value on the open market (eg a weekly rented flat, or accommodation provided by an employer) and
- the taxpayer was unaware that such an election could be made.

In such cases the election can be made within a reasonable time of the individual first becoming aware of the possibility of making an election, and it will be regarded as effective from the date on which the individual first had more than one residence.

As you can see there are traps for the unwary. If you are concerned that this could affect you and need further advice please contact us.

Real Time Information (RTI) - extended relaxation

Since April 2013 almost all employers must report payroll information online to HMRC when or before any employee is paid. This information includes details of employees, their pay, tax and national insurance deductions.

HMRC had previously recognised that some small employers who paid employees weekly, or more frequently, but who only processed their payroll monthly, may have needed longer to adapt to reporting PAYE information in real time. As a result they had agreed a temporary relaxation of reporting arrangements for small businesses with fewer than 50 employees. This allowed small businesses who found it difficult to report every payment to employees at the time of payment, to instead send the information to HMRC by the date of their regular payroll run but no later than the end of the tax month (5th).

This was originally to apply up to 5 October 2013. However, HMRC have announced that they are planning to extend the temporary extensions to 5 April 2014. After the relaxation period ends all employers will be required to report PAYE in real time each time they pay their employees.

If you feel that you could benefit from this temporary extension please contact us for further advice.

Qualifying business disposal or not?

It is easy to assume that if you build up a successful unincorporated business that you will be entitled to Entrepreneurs' Relief (ER) on disposal. This valuable relief reduces the tax liability to 10% on qualifying gains up to a lifetime limit of £10 million. However, there are various conditions which have to be met and a lack of attention to the detail may leave you exposed to 28% tax instead.

The essentials

An individual must have ownership of a business for the 12 months leading to a qualifying material disposal. A disposal includes sale, gift, incorporation, transfers (for example to a trust) and cessation. Ownership means either you are a sole trader or you have a partnership interest including membership of a Limited Liability Partnership. Other criteria for qualification apply with regard to companies and their shareholders which are not considered further in this article.

Trading businesses only

Only trading businesses qualify for ER. This means that ER will mainly be due on the gains arising from property used for trade purposes and business goodwill. Investment assets will not be eligible for the relief. This means that a general property investment business does not qualify even though this may be how you earn your livelihood through active management of your properties. This applies whether the property is commercial or residential. Certain property based businesses may qualify as a trading business such as a hotel or caravan site. In addition an exception exists for residential properties which are deemed to be a trading business for capital gains tax (but not inheritance tax) under the special rules for Furnished Holiday Lettings (FHL).

Strangely there is no specific law requirement to disqualify part of the gain on an asset where there has been other use of the trading asset during the period of ownership. The need to consider an apportionment between qualifying and non-qualifying purpose is though specifically required on what is known as an associated disposal. This is the disposal of an asset, frequently premises, owned by an individual outside of the business or company but used in the trade of the business or company. For the unincorporated business this would mean where a partner personally owns the property which is used by the partnership rather than being held within the partnership business.

It therefore appears that full ER may be available on an asset which, at the time of disposal, is not held as an investment but is owned for the purpose of the trade (and the trade has been carried on for the requisite one year period). An example could be of a property originally used as an investment property which has subsequently been used in a trade, for example a residential property which then subsequently qualifies as a FHL.

What about a part disposal?

For ER purposes there is a clear distinction for there to be a qualifying material disposal between the disposal of a trade or part of a trade as opposed to disposing of just an asset used for the purposes of a trade.

When an unincorporated trading business ceases there are special conditions which, if they apply, allow assets to be separately disposed of and ER obtained. Disposals of assets used in the trade at the time at which the business ceases to be carried on can be disposed of within three years of the date of cessation of the trade. ER applies even where the assets are subsequently used for another purpose in the intervening period such as being rented out.

However if the business continues then the sale of an asset used in the business will generally not qualify even if it is a substantial asset. A recent tax case on ER concerning the sale of farming land has confirmed this point. The Tribunal found for HMRC on the basis that it was a disposal of part of an asset used in a business, not part of a business. The facts concerned the sale of 35% of the land asset used to grow barley crop which naturally led to a similar decrease in turnover and profit. This was not considered to be a part business disposal as there was no identifiable change in the nature or conduct of the business carried on by the partnership after the sale. The fact that there was a material reduction in the same activity was not considered to be a material business disposal. Where there are several distinct trading activities and one is sold off as a going concern then that should qualify as a part business disposal.

As you can see ensuring ER is obtained can be a tricky business and this may require forward planning so do contact us to review your current position with regard to securing this valuable relief.