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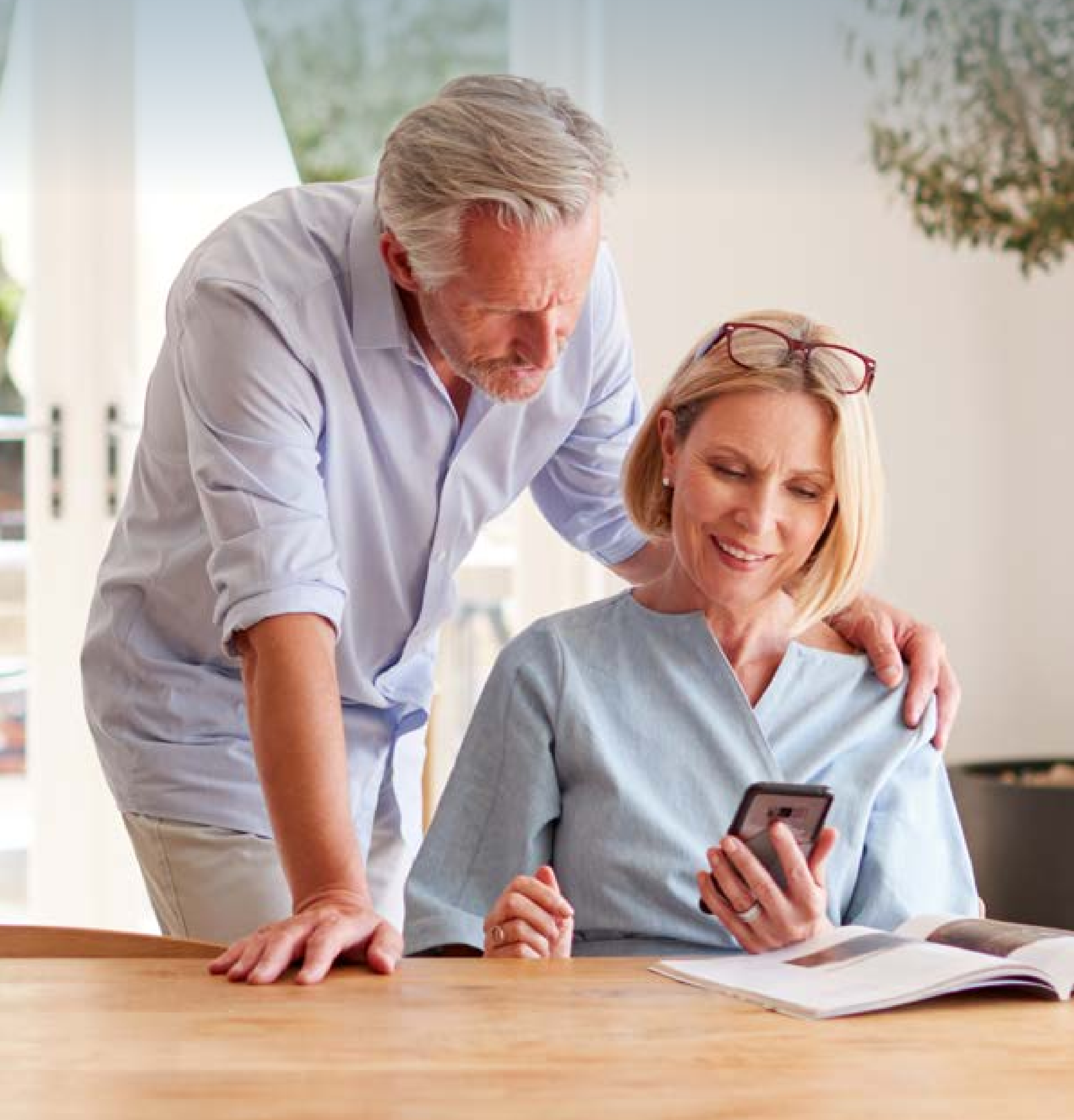
Private Client Briefing

Spring 2022



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Welcome from the editor

Welcome to the latest edition of our Private Client Briefing, which summarises a number of issues and opportunities for individuals, families and trustees.

We again find ourselves in challenging and uncertain times. Economic uncertainty and increases to the cost of living are coupled with increases to the rates of National Insurance and income tax on dividends.

Alongside these tax increases, we continue to see increased enquiry activity from HM Revenue & Customs (HMRC) and confirmation of fundamental changes to the tax system in less than two years with the introduction of Making Tax Digital for Income Tax.

Please do not hesitate to contact me or any of the Team, if we can assist you in any way.

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Extracting profits from an owner-managed business

Recent increases to the rates of National Insurance (NI) and Income Tax on dividends mean that all owner-mangers should review the method and timing of how they extract profits from their companies.

Profits can be extracted in a number of ways, the most efficient mix of which depend on your personal circumstances, including your age. With increased rates of NI and Income Tax on dividends, and an increase to the Corporation Tax rate from 2023, the long held assumption that paying a dividend is more tax efficient, is no longer necessarily the case.

Using Mr Taxpayer (Mr TP) as an example.

Ways to extract profits via income:
Mr TP is a Director/Shareholder of TP Ltd and is seeking the most tax efficient way of extracting profit from his company. The options available to him are:

1) Small salary/dividend
Mr TP's company has £100,000 of profit to distribute – his options are to pay everything as a salary or pay a small salary and the balance in dividends.

His salary should be up to the NI threshold of £9,100 for 2022/23. This protects his entitlement to state pension credit for the year but would not be subject to either employer or employee NI, nor would it be liable to Income Tax as it falls within his personal allowance of £12,570.

Corporation Tax (at 19%) would be payable on TP Ltd's taxable profits after deducting his salary. Mr TP could then pay himself the balance as a dividend. In addition to using the balance of his Personal Allowance, the first £2,000 would be tax-free as it falls within the dividend allowance. The excess would be taxed at 8.75% or 33.75% if it falls within the higher rate threshold.

In summary the position would be:

	Salary	Small salary & dividends
Companies profit	£100,000	£100,000
Net income (after deducting Income tax, Corporation Tax, NIC and Personal allowance)	£58,852	£68,650
Effective rate of tax	41.15%	31.35%
Effective tax saving		9.80%

By structuring his remuneration carefully, the net receipt could be almost £10,000 higher.

2) Pension contributions
Employer pension contributions to a UK-registered scheme are deductible for Corporation Tax purposes. In addition they do not count as a taxable benefit. Contributions may be made up to the individual's £40,000 annual allowance for 2022/23, although there may be scope to pay extra if unused relief is available in the previous three years.

TP Ltd could pay up to £40,000 into Mr TP's personal pension, which would save £7,600 in Corporation Tax.

3) Loans to the company
If Mr TP has loaned money to the company, he can charge a commercial rate of interest. The interest payable would be tax deductible for TP Ltd, but the interest received would be taxable for Mr TP, although not subject to NI. Depending on his total income, the interest could be tax-free if it falls within the savings/interest allowance.

4) Directors Loan Account
Where a director owes the company £10,000 or more (interest-free) at any time in the tax year, if the loan account is overdrawn by this amount and for more than a tax month, this loan is a benefit in kind to the director and it is necessary for the company to report this on forms P11d and P11d(b) toHMRC. The benefit in kind is a taxable benefit and subject to income tax on the director. There is also Class 1A NI due for the company.

Why now?
Since the start of the 2022/23 tax year, dividend tax rates and all forms of NI have increased by 1.25%. It is therefore important to review your remuneration and profit extraction plans to ensure that they are as tax efficient as possible.

Alternatively, profit can be realised as capital, either as a result of the shareholder selling their shares to a third party, or where a third-party buyer has not been identified, the company buying back the shares, in particular circumstances.

Purchase of own shares
If a company purchases its own shares from a shareholder, the default position is that the excess of the price paid over the original subscription price is treated as a distribution and subject to income tax in the same way as a dividend.

However, the amount received by a shareholder on selling their shares back to the company may be treated as capital, rather than as a distribution, provided certain conditions are met. Where the conditions are met, the transaction will be subject to Capital Gains Tax (CGT), and the resulting lower tax rate of 10%/20%, rather than the Income Tax rates of up to 45%. The conditions include:

- The company must be an unquoted trading company
- The repurchase of shares must benefit the company's trade
- The selling shareholder must be UK tax resident
- The shareholder must have held the shares for five years
- There must be a substantial reduction in the shareholder's shareholding
- Following the buyback, the shareholder cannot be connected to the company.

If you would like to discuss any of these profit extraction options or some forward tax planning, please do not hesitate to contact the Private Client Team.

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UK Tax residence – COVID-19 easement ending

During the COVID-19 pandemic, many non-UK resident employees were stranded in the UK due to travel restrictions. In 2020, HMRC introduced an easement of the UK's Statutory Residence Test (SRT) rules.

The amendment to the SRT rules stated non-UK resident employees would not be taxed on earnings within the UK after their planned departure date, provided they are taxed in their home country. See our Autumn 2020 article for more details.

Since isolation regulations were removed on 24 February 2022, HMRC have taken the decision to end the easement of travel restrictions, which will no longer apply from 5 April 2022. Therefore, it is no longer considered just and reasonable to treat individuals as though they remain outside the UK.

How will this impact our clients?

From 6 April 2022, if a taxpayer is a non-UK resident, any days spent working within the UK will be treated as days on which they performed duties in the UK. The case will remain, even if they are prevented from leaving the UK due to COVID-19 related travel restrictions.

If you would like to discuss your UK tax residence position, please get in touch with your usual haysmacintyre contact or a member of our Private Client team.

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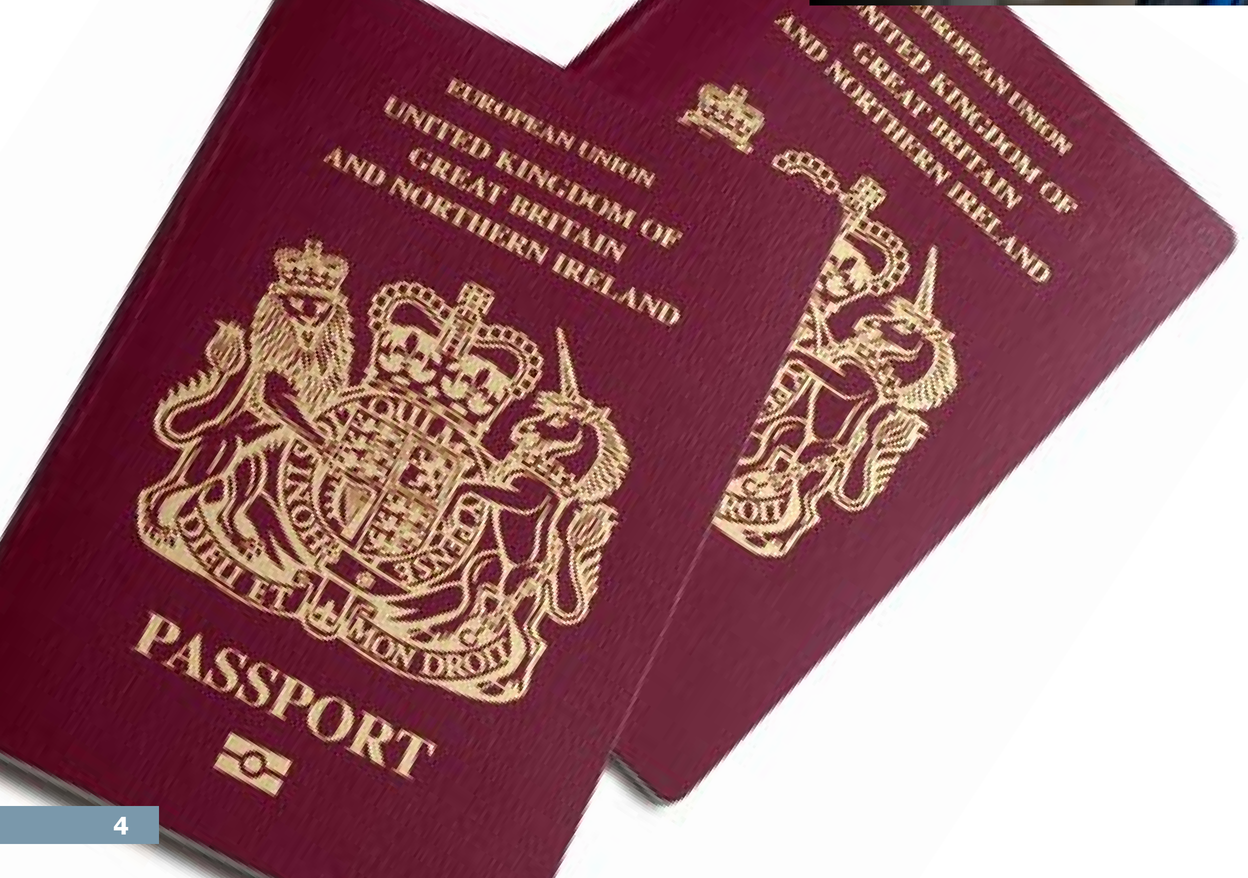

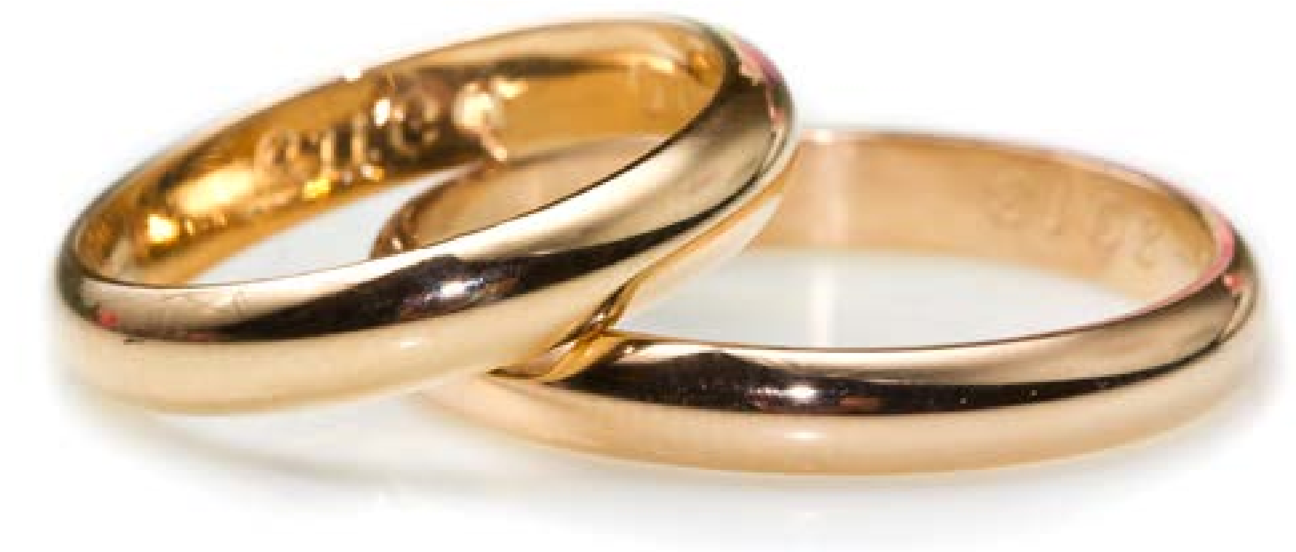

No fault divorce – a welcome change but what about the tax rules?

New laws introduced from April 2022 allow for 'no fault' divorce. The aim is to reduce or in some cases remove the emotional distress arising from divorce proceedings where previously one party had to blame the other's unreasonable behaviour as grounds for the divorce.

The process is expected to be quicker, but couples will still need time to agree an equitable division of their assets. Whilst this is not usually at the forefront of anyone's mind during the process, tax planning should be considered to avoid an unexpected tax bill on the transfer of assets.

Under current rules the usual 'no gain/no loss' Capital Gains Tax (CGT) exemption on transfers between spouses will only apply for the tax year in which the couple separates. A couple separating in June 2022 for example would have until 6 April 2023 to complete the transfer of assets to take advantage of the tax exemption. As an example, if the transfer of a second home takes place after the year of separation, a CGT liability might arise based on the difference between the current market value of the property compared to its original acquisition cost. This could even apply to the matrimonial home if one party has subsequently moved out and is no longer occupying it as their main residence.

This time limit does not allow couples to organise their finances and assets properly which can either lead to rushed settlements or unforeseen tax bills.

The Government has indicated it is willing to extend the exemption to at least two years following separation.

However, it has not yet said when this will be implemented and has only so far committed to a consultation this year.

Although the tax-free status of CGT requires the couples to be living together and not separated, the same does not apply for Inheritance Tax (IHT). The tax-free interspousal gift rules apply until the divorce is finalised. Thereafter the normal seven year rules on potentially exempt gift apply.

Considering or going through a separation or divorce? Contact us for advice on the tax efficient distribution of assets.

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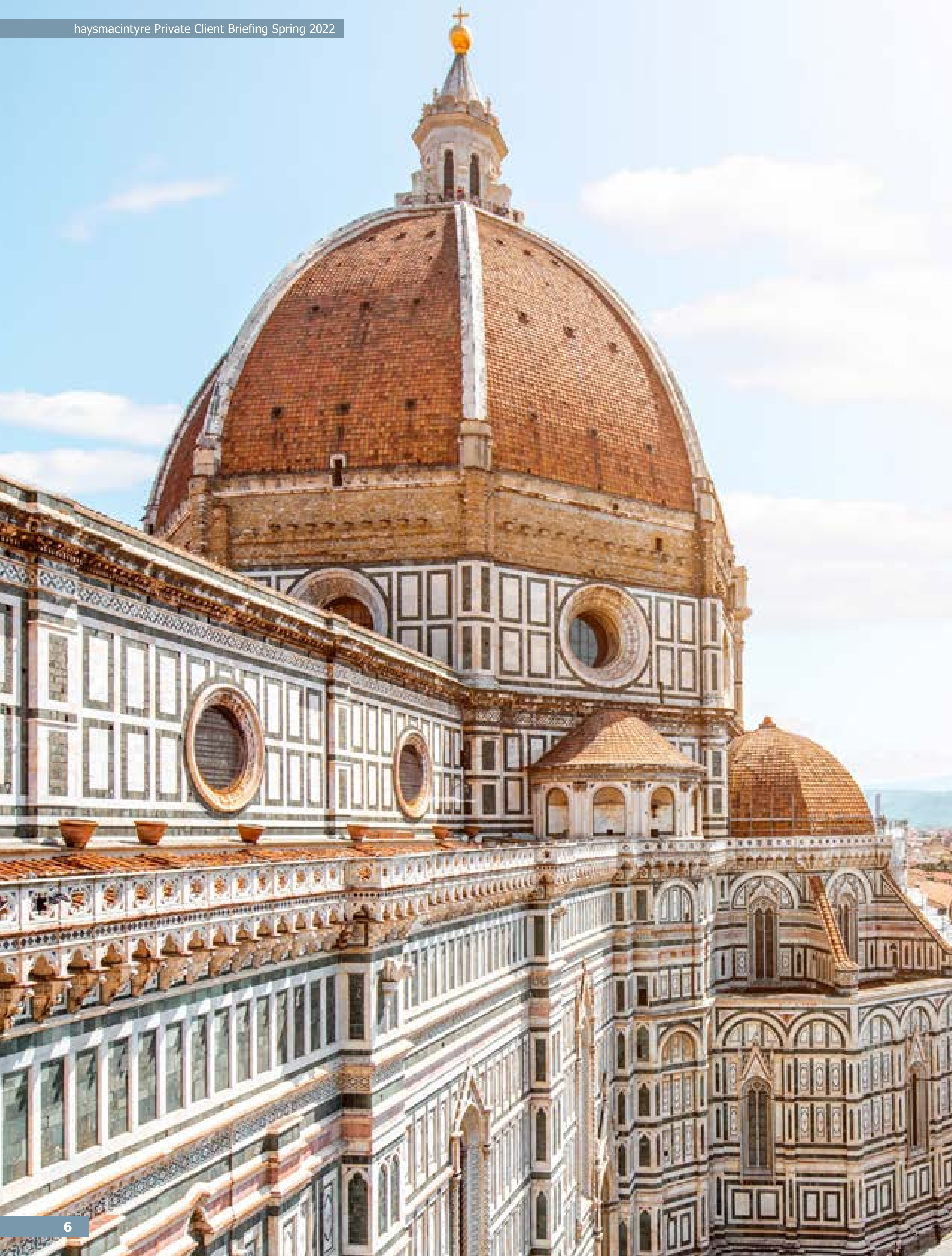

Tier 1 (Investor) visa route closes

On 17 February 2022, the Government announced that the Tier 1 (Investor) visa route would be closed to new applicants with immediate effect.

The 'Investor' visa has historically been attractive to wealthy individuals from overseas looking to relocate to the UK, with the visa allowing settlement and eventually UK citizenship in exchange for a £2m investment to the UK. The Government's justification for closing this visa route includes concerns that this visa category gave rise to security concerns and that closing this visa route was the start of a renewed crackdown on fraud and illicit finance. The lack of notice given was intended to avoid an influx of last minute applications.

For individuals who already hold a Tier 1 (Investor) visa, it is still possible to make an application for leave to remain before 17 February 2026. Individuals wishing to apply for indefinite leave to remain must submit applications before 17 February 2028. It is advised that all investors who meet the qualifying conditions make a settlement application as soon as possible and, in any event, ahead of the closure of this route in February 2028.

The Government states that settlement in the UK will now be conditional upon applicants executing an investment strategy that will aid genuine job creation and provide other economic benefits. Other visa categories will be expanded and revised to enable entrepreneurs wishing to run a business in the UK, if they are able to demonstrate a track record of investing overseas. The end of the 'Investor' visa means that passively holding UK investments will no longer be sufficient to obtaining UK settled status, but opportunities will still be available to individuals who can contribute skills, innovation, and growth to the UK economy.

If you are an individual wishing to relocate to the UK, we recommend that you seek tax advice before you become a UK tax resident. Please contact us for pre-immigration tax planning advice.

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Business Investment Relief for non-UK domiciles

One of the requirements for claiming the remittance basis as a non-domiciled individual is that you cannot bring offshore income and gains into the UK without creating a tax liability.

Although it is possible to remit 'clean capital' tax-free, problems arise from mixed funds where it may not be possible to determine whether the money is clean capital, capital gains or income. The individual may also only have taxable sources of funds to call on.

One option to avoid a liability on remittance is Business Investment Relief (BIR) which grants a special exemption for money brought into the UK for the purpose of investing in a qualifying company. The amount invested is not treated as a taxable remittance, providing the strict rules are met.

To qualify, the remittance must be used to buy shares in or make a loan to a company undertaking a commercial trade with a view to a profit or a holding company of a trading group. In addition, the money must be invested within 45 days of the remittance. Finally, once the investment has concluded and the capital returned, it must either be reinvested in another BIR qualifying company, or withdrawn offshore. Failure to comply means that the remittance will be treated as taxable.

It is possible to combine the exemption arising from a BIR remittance with other tax reliefs such as Enterprise Investment Scheme (EIS). The remittance itself will be tax-free as it will be used to invest in an EIS qualifying company. The 30% tax relief arising from the EIS could be used to offset tax arising on UK assets, such as salary or rental profits, or it could be used to offset tax due on further remitted income not used for BIR purposes.

For example, an individual remits £87,500 with £50,000 invested in an EIS qualifying company and £37,500 retained for personal expenditure. The £50,000 is exempt via BIR and the £37,500 is taxed at 40% giving a tax liability of £15,000. This liability is then sheltered by the 30% income tax relief arising on the £50,000 EIS investment, which means that effectively the whole £87,500 can be remitted without paying any additional tax.

If the EIS investment is successful and generates a capital gain, this will be tax-free under the EIS rules if the shares are held for more than three years. Only the original £50,000 must be taken back offshore, any surplus can be retained in the UK.

BIR offers an opportunity to non-domicile residents to invest in UK companies with money that would otherwise be subject to tax. However, it is all too easy to breach the conditions and create an unexpected tax liability, so careful planning and advice are essential.

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The UK's new Overseas Entities Register for those who own UK land

If you are a non-UK resident trustee or are otherwise involved with a non-UK entity that owns or hopes to own UK land, you need to be aware of the UK's Economic Crime (Transparency and Enforcement) Act 2022 that received Royal Assent on 15 March 2022.

The Act was originally branded as the Registration of Overseas Entities Bill in 2018, but this was fast tracked through the UK Parliament in light of the Russian invasion of Ukraine.

Brief history of the legislation

The UK government issued a discussion paper in March 2016 due to concerns about the lack of transparency afforded to certain owners of UK real estate, who could hide their identities using overseas entities and structures.

After the 2016 'call for evidence' and the UK government's response in March 2018, the draft Registration of Overseas Entities Bill was published in July 2018. Some adjustments were made in 2019 and then the world changed, placing this on the backburner.

Recent events brought it back into focus, and the UK government reintroduced this legislation in February 2022 to be fast tracked through Parliament as part of their urgent response to the Russian invasion of Ukraine.

There are three parts to the Act, but here we focus solely on the Register of Overseas Entities. The other two aspects relate to Unexplained Wealth Orders and Sanctions.

The Register of Overseas Entities

Information currently available on overseas entities that own UK land is limited to the entity's name and where it was incorporated, rather than who ultimately owns the land. The intention behind this new register is to stop the use of illicit funds to buy UK land by increasing transparency for (and hopefully public trust in) overseas entities who own, or aim to own, UK land by identifying who ultimately owns and controls them.

The new legislation will require any overseas entity that wishes to own UK land (or indeed, has since any time after 1 January 1999) to:

- Identify its beneficial owner(s)
- Register its beneficial owner(s) with Companies House in exchange for an overseas entity ID number
- Keep the register up to date each year. This is much like the Persons of Significant Control register that already applies to UK companies.

Overseas entities that already hold UK land will only have six months to either register or sell the land, but the details still need to be provided for sales post 28 February 2022.

Failure to register or provide the relevant information to Companies House will result in the UK's Land Registry not registering title to any UK land for an overseas entity, which will effectively freeze the UK land for any non-compliant entity because they will not be able to buy, use or sell it.

Who is a beneficial owner?

A registrable beneficial owner is broadly an individual or another entity that directly or indirectly owns 25% of the shares or voting rights in the overseas entity or can appoint/remove a majority of the board.

For trustees who hold any of those rights, the beneficial owner will be an individual or other entity that has the right to exercise, or actually exercises, significant influence or control over the activities of their trust. This will be crucial given that the managing officers are held liable for errors.

What information is required?

Individuals who are beneficial owners must provide the register with the following:

- Name
- Date of birth
- Nationality
- Usual residential address
- A service address
- Date they became a registrable beneficial owner

As a result of considerable personal information uploaded to this public register, certain protections will be implemented, including the permanent suppression of the date of birth and usual residential address, as well as the protection regime for individuals that may be placed at risk as a result of being identified on the public register.

In providing this information, each relevant overseas entity must confirm that it has taken reasonable steps to identify all beneficial owners and file the relevant identification information with Companies House.

The onus is placed firmly on the overseas entity to check for any registrable beneficial owners and declare one of the following:

- That it has identified all beneficial owners and has no reason to believe there are others, and that it is able to provide the required information about those identified
- That it has no reason to believe that it has any registrable beneficial owners and instead provide required information about its managing officers
- That it has reasonable cause to believe that it has a registrable beneficial owner, but has been unable to identify the beneficial owner and therefore cannot provide the required information
- That it has identified beneficial owners but cannot provide all the required information about all or one of them.

Who is responsible?

It is a criminal offence by the entity and every officer, including 'shadow directors', to fail to comply with the annual updating duty. It is worth noting that professional advisers to an entity are not within the scope of the legislation.

Potential relaxation?

There is room for regulations to be introduced to limit what must be provided, where there is an equivalent local company register. This would be a very helpful limitation, so keep your eyes open for future developments.

What action should you take?

Companies House now have to implement the register as soon as possible. However, in the meantime, any foreign entity selling UK property between 28 February 2022 and the register implementation date is required to submit their details at the point of sale.

For fiduciary service providers who have looked after such entities in any capacity and directors or shareholders of such companies, we would suggest a thorough review of your records to identify those with UK properties and consider whether you need to register the entity and how to do it.

The penalties are very steep, with fines at up to £2,500 per day per relevant person and a risk of five years in prison in some circumstances.

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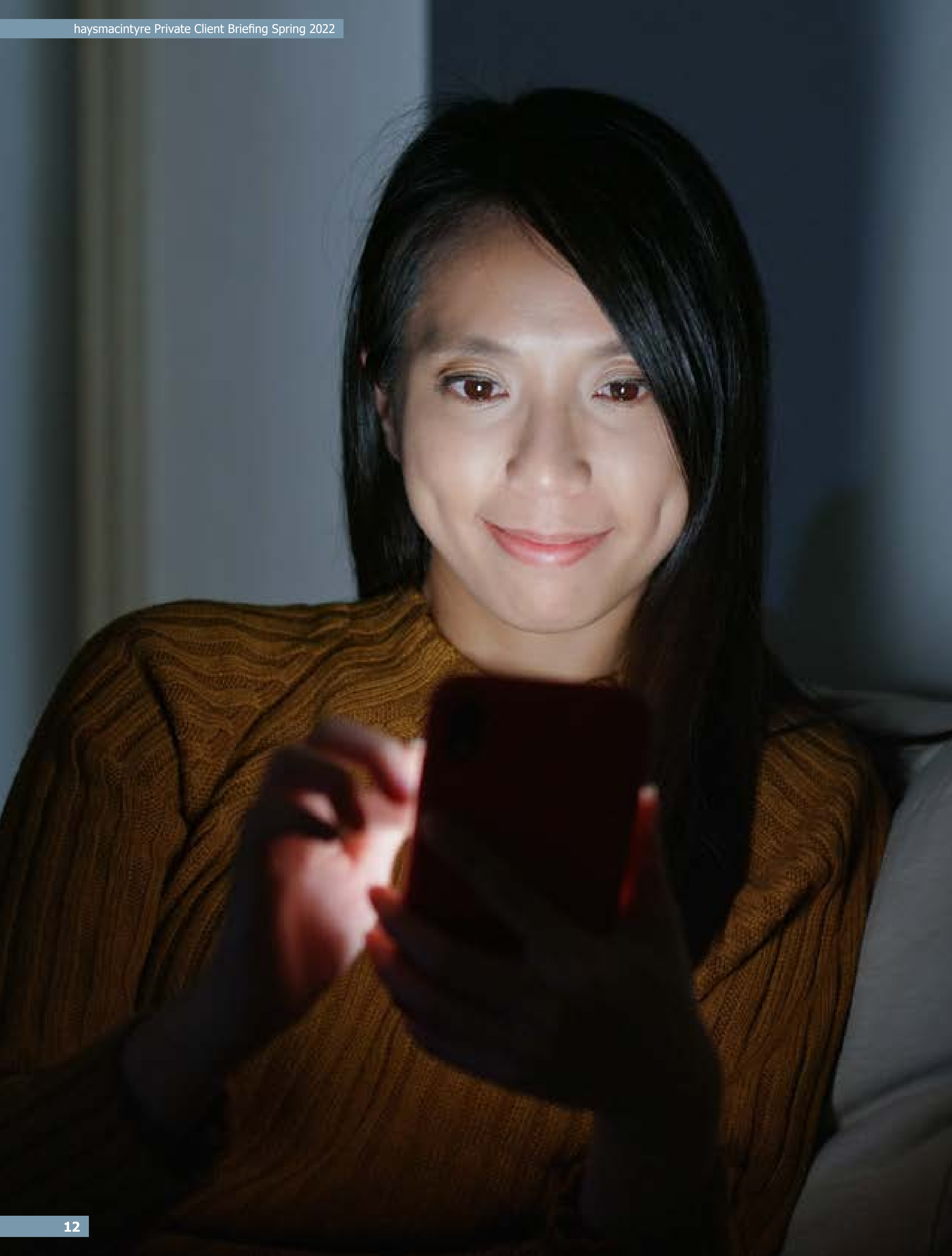

Making Tax Digital

Making Tax Digital (MTD) for income tax will take effect from April 2024. The introduction of MTD will be a significant move to a more digitalised tax system, which will result in eligible individuals (from April 2024) and partnerships (from April 2025) being required to file quarterly submissions to HMRC, along with keeping digital records.

The introduction of MTD for income tax will also see a new penalty regime (see page 16) along with a change to how self-employed and partnership profits are taxed is summarised below.

Basis Period Reform
At present, self-employed/partnership profits or losses are generally based on the set of accounts ending in the tax year, known as the 'current year basis'.

The new rules, being introduced with MTD for income tax, will be a 'tax year basis' and come into effect from the 2024/25 tax year. The tax year basis will mean that individuals will be taxed on profits (or utilising losses) that arise in the tax year, rather than the previous method where it was based on the accounting period that ended in the tax year.

Individuals and partnerships with an accounting date other than the end of the tax year and those who choose not to change their accounting date will therefore need to apportion profits/losses from different accounting periods for the 'tax year basis'. This will likely result in using provisional figures in tax returns before submitting final figures once the later accounting period taxable profits have been finalised. In order to move from the 'current year basis' to the 'tax year basis' there will be a transitional period in the 2023/24 tax year.

We strongly recommend that you speak to your usual haysmacintyre contact as soon as possible if you think the above may affect you.

For more details about MTD or any of the above, please contact Alfie O'Dell or your usual haysmacintyre contact.


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HMRC penalties for inaccuracies in returns

Penalties are often charged when a tax liability is established by HMRC, regardless if it is during the course of an enquiry, via a formal assessment or when a disclosure is made. Although the tax liability is usually definitive, the type and amount of any penalty is not so clear-cut.

HMRC Penalties For Inaccuracies in Returns
When a tax liability is established by HMRC, whether in the course of an enquiry, via a formal assessment or when a disclosure is made, a penalty is often also charged. Whilst the tax liability is usually black and white, the type and amount of any penalty is not so clear-cut.

There are four behaviour types defined by HMRC for penalty purposes:

- Mistake despite taking reasonable care – HMRC accept that appropriate care was taken but a mistake has been made. Accordingly, no penalty is applied.
- Careless – defined as a failure to take reasonable care. A mistake was made through an insufficiency in record keeping or a process relating to accounts or a tax submission.
- Deliberate – a tax submission or document was submitted to HMRC with knowledge it was incorrect.
- Deliberate and concealed – the most serious behaviour type, where a submission was knowingly incorrect, and steps have been taken to conceal this. This may include falsifying or backdating documents, destroying records or creating false sales records.

The type of behaviour directly affects the penalty range which can be applied. A careless error carries a penalty of 0%-30% of the tax due and a deliberate penalty ranges between 20%-70%.

Furthermore, the lower range of a penalty is removed where the discovery is considered prompted, guaranteeing a higher penalty. Prompted is defined as the actions of HMRC, whether this is an enquiry, a letter or similar. The penalty range for prompted errors is restricted to half of the maximum, so a prompted careless error would carry a penalty of 15%-30% and a prompted deliberate error would range between 35%-70%.

Deliberate and concealed errors carry the highest penalties and also the greatest risk of being considered for criminal prosecution due to the seriousness of the error. When unprompted, the penalty range is 30%-100% of the tax, but when prompted, the penalty will be between 50%-100% of the tax.

A further quirk, which applies to careless penalties only, is suspension of the penalty. A penalty due to a careless error can be suspended for a period to be agreed with HMRC, and will not become chargeable providing certain conditions are met and no further penalties charged. The intention of suspension is to act as a deterrent and promote future compliance and to ensure taxpayers get it right going forward.

In order to obtain the most favourable outcome possible with regards to penalties, a voluntary disclosure to HMRC is often the best route. An individual would benefit from the availability of the minimum for each penalty range and it is likely the maximum mitigation of the ranges would be achieved.

If you believe there may be an error or omission with regards to your tax affairs, it is recommended you speak with a professional advisor at the earliest opportunity. Burying your head in the sand could lead to an HMRC enquiry in the future where the error is discovered. In addition to the increased financial outlay of interest and prompted penalties, there is a great time cost to an enquiry, which can be intrusive and long-running.

In practice, careless is the standard behaviour type applied to non-deliberate errors, with HMRC setting a very high bar for accepting an error has arisen despite reasonable care being taken. Similarly, HMRC often assert deliberate behaviour has led to the error when this may not necessarily correlate to the facts of the case.

We have increasingly seen HMRC adopt a tougher stance with regards to penalties, possibly as a result of the increased revenue to the exchequer higher penalties would bring.

In the case of careless or deliberate penalties, the onus is on HMRC to prove the underlying behaviour which they allege led to the error. It is strongly recommended to take professional advice in relation to proposed penalties, the advantage is clear in securing a less severe behavioural penalty. As an example, a penalty of 40% which HMRC allege is caused by deliberate behaviour would result in no penalty payable were HMRC to agree careless behaviour and suspension of the penalty (if applicable).

This article is intended to cover the key points in relation to inaccuracies in tax submissions, please be aware the potential penalties are a minefield. There are separate regimes for offshore penalties and failure to notify - where no tax return is filed or HMRC is not notified of income or gains. We strongly recommend seeking professional advice to help navigate any penalties which may be applicable and to obtain the best result for you the taxpayer.

Our team have a detailed knowledge of HMRC's penalty legislation and a proven track record in challenging and appealing HMRC's incorrect assessment of the underlying behaviour through to the mitigation of penalty charges.

Self-Assessment and Making Tax Digital penalties

In readiness for MTD, commencing 6 April 2024, HMRC have confirmed that a new points-based penalty regime will be introduced for late quarterly MTD submissions/annual tax returns along with revised penalties for the late payment of tax. The new penalty regime will align the rules for VAT with Income Tax.

These new systems will come into effect as follows:

- **1 April 2023:** for VAT registered taxpayers
- **6 April 2024:** for Income Taxpayers with business/property income, or a combination of both, in excess of £10,000 per year. This means they will be required to submit quarterly submissions through MTD.
- **6 April 2025:** for all other Income Taxpayers who do not meet the MTD filing requirements but continue to file a Self-Assessment tax return

Late submission

The new system has been introduced to enforce larger penalties to those who consistently miss deadlines.

Under the current system, individuals receive a flat £100 late filing penalty should a deadline be missed with further penalties accruing should the return remain outstanding after three, six and 12 months.

Going forward, a new points-based system will be introduced whereby the late submission of a quarterly MTD submission/tax return taxpayers will incur a penalty point. The more deadlines missed, the more points incurred until the penalty threshold is exceeded. The penalty threshold is dependent on how often you submit a quarterly MTD submission/annual tax return as summarised below:

- Quarterly MTD submission: four points
- Annual tax return: two points

Once you have exceeded the threshold, an automatic £200 late filing penalty will be incurred. For every deadline missed whilst over the threshold, a further £200 penalty will be issued.

Once a taxpayer has met their quarterly MTD submission/annual tax return obligations for a certain period of time, previous penalty points incurred will expire. The penalty points will expire for taxpayers within the quarterly MTD submissions and Self-Assessment tax return system once all deadlines have been met for 12 and 24 months, respectively.

HMRC have confirmed that taxpayers can continue to appeal against penalties should they have a reasonable excuse.

Late payment

Along with the introduction of the new late submission regime, HMRC will be introducing a new penalty system for late payments. Under the new system the taxpayer will not incur a penalty if all tax is settled within 15 days of the due date.

If after 15 days any tax remains outstanding, the first late payment penalty charge will be due at 2% of the outstanding amount and will become payable 30 days from the original due date. If any tax remains outstanding 31 days after the initial due date, an additional penalty will be due on the outstanding amount, accruing on a daily basis at a rate of 4% per annum. Please note if taxpayers have agreed Time to Pay Arrangements with HMRC then late payment penalties will not accrue.

Finally, HMRC have confirmed that late payment interest will continue to accrue daily based on their official rate of interest, currently 3.25%.

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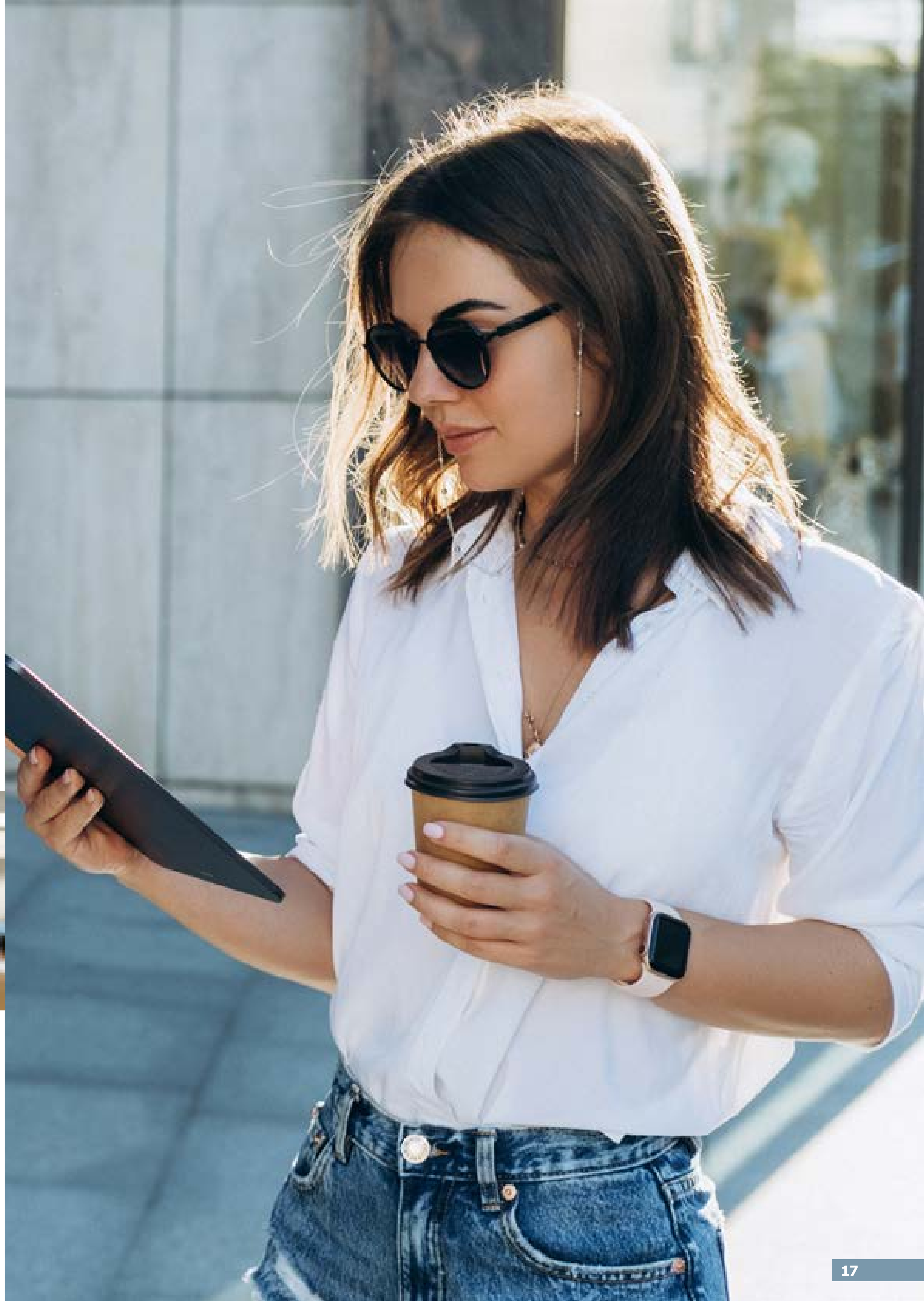

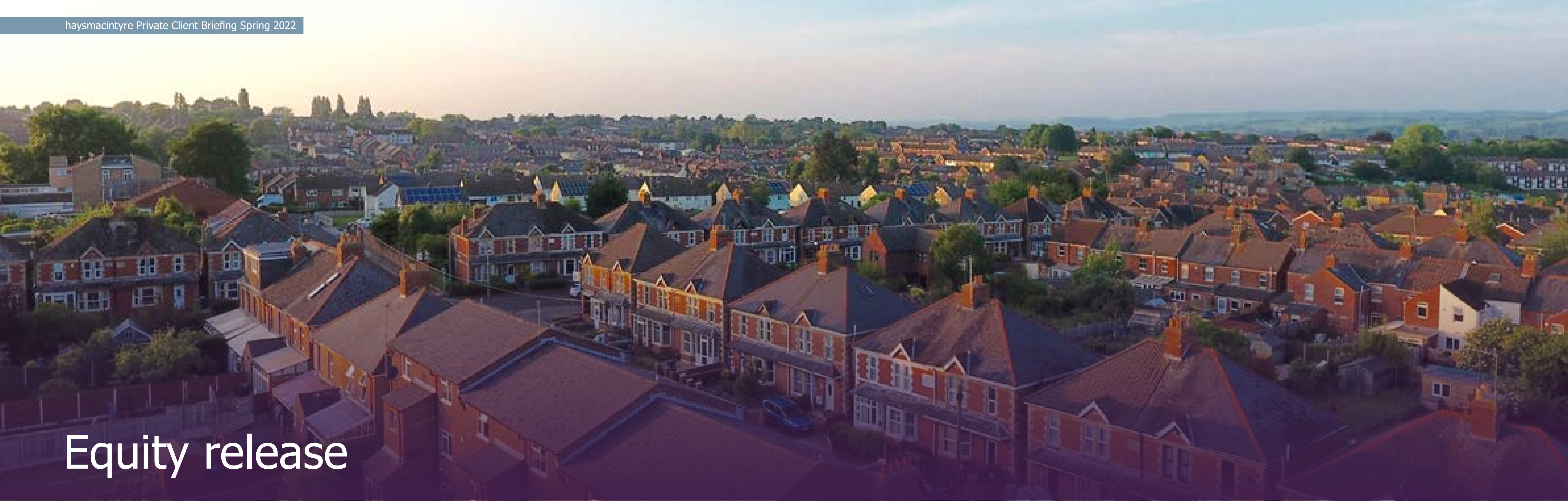

Equity release

Changes to the reporting requirements and payment of CGT on taxable disposals of UK residential properties came into effect from 6 April 2020. Following a 2021 Autumn Budget announcement, for disposal completions of residential properties from 27 October 2021, the deadline increased to 60 days from completion, as opposed to the previously tight 30 day time limit.

The changes apply to all disposals made by UK resident individuals, trustees, and personal representatives of estates and partnerships, of any residential land or property in the UK. Disposals include the gift of properties to connected persons and to the settling of properties into trust. Non-UK residents have been subject to similar obligations since April 2015.

Report and paying capital gains tax
Disposals of UK residential property must be reported to HMRC, and any CGT paid, within 60 days. The clock starts ticking from the date of completion, rather than the day on which contracts are exchanged.

The new rules significantly reduce the timescale for paying CGT and increase the compliance requirements.

Planning Ahead
The relatively new reporting regime requires the creation of a standalone CGT UK Property Account, using HMRC's dedicated online service. To set up your Property Account, you must first set up a Personal Tax Account with HMRC.

Whilst straightforward for most taxpayers, plan ahead and set up your account, well in advance of any property disposals. Instructions are available here.

The 60 days CGT return requires a calculation of the gain to be attached. Full details are required, including:

- Sale proceeds
- Current market value for gifts or transfers to trust
- Costs of sale and purchase, e.g. solicitors' fees
- Stamp Duty Land tax (SDLT) paid on purchase
- Any costs of capital improvements.

With only 60 days to complete the return, time is of the essence, and we recommend that these details are collated in advance of any disposal.

Tax advisors can prepare and submit the returns on behalf of their clients: a new online agent authorisation process must be completed.

The gain must also be included on the annual SA tax return, if you are required to submit one. The CGT paid at the 60-day date is treated as an interim payment on account against the final SA liability.

Exemptions
There is no obligation to file a return for transactions where there is no tax due, eg if:

- Selling your main residence and it is exempt as a result of the 'Principal Private Residence Relief'
- The Property is sold at a loss
- The transfer is between spouses or civil partners on a 'no gain/no loss' basis
- Losses brought forward are available to extinguish the taxable gain
- The capital gain is covered by the annual exemption (£12,300 for 2022/23 tax year).

UK resident companies do not fall within the scope of this new CGT regime and will continue to pay Corporation Tax on gains on the disposal of residential property.

Interest and penalties
We know that HMRC has access to Land Registry details of property sales and is actively reviewing property transfers therefore it is important to submit a return within the 60 day period.

If the CGT return is not filed and/or the tax not paid within said period, penalties are applied in a similar way to Self-Assessment with an automatic late filing penalty of £100. If the return remains outstanding after three months, daily penalties of £10 per day may start to accrue, with a further penalty of the higher of £300 or 5% of the outstanding tax due after six months and 12 months, respectively.

It is important that you notify your usual haysmacintyre contact as soon as you put the property on the market or have accepted an offer on the property. This is so we can complete an accurate calculation of your gain as soon as completion has occurred, whilst ensuring the return is submitted ahead of the tight deadline set by HMRC to avoid penalties or interest.


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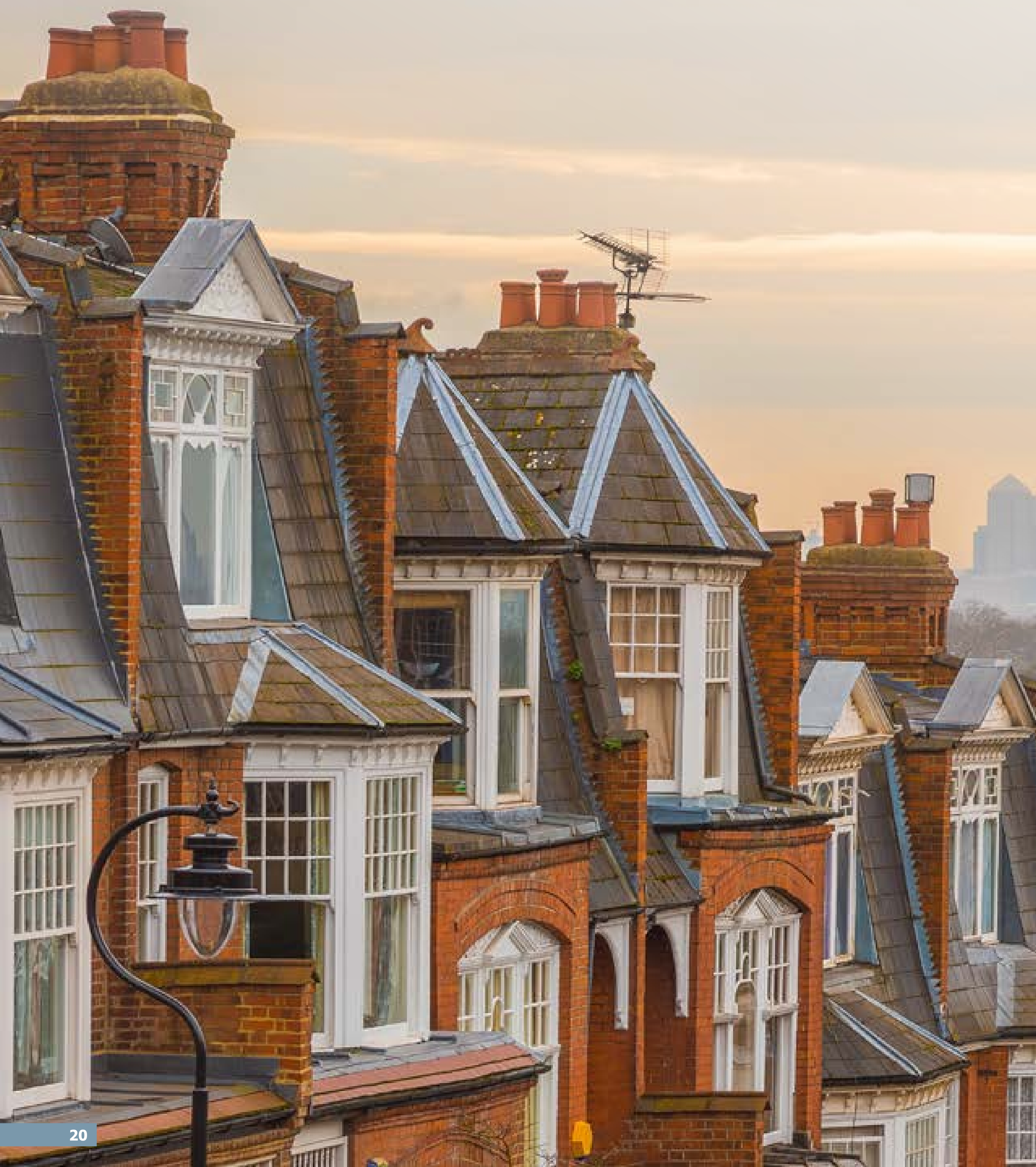

Annual Tax on Enveloped Dwellings – property revaluation required on 1 April 2022

The Annual Tax on Enveloped Dwellings (ATED) applies to companies which hold UK residential property with a value of £500,000 or more. There are fixed revaluation dates, every five years: the latest was on 1 April 2022.

A valuation, on an open-market willing buyer, willing seller basis, must be determined for all relevant properties on 1 April 2022. The April 2022 revaluation will be utilised for the ATED returns and relief declarations for the next chargeable period 1 April 2023 to 31 March 2024, which are due for submission by 30 April 2023.

We have recommended valuers who can provide this service for you, please let us know If you would like us to put you in touch with one.

With recent increases to house prices in many areas, it is likely that a number of residential properties will fall into the ATED regime for the first time, if they are now valued at £500,000 or more, and that other properties will fall into a higher ATED band and be subject to a greater ATED charge.

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Gifts out of surplus income

One of the most valuable exemptions from Inheritance Tax (IHT) is to utilise the gifts out of surplus income to reduce the value of your estate, whilst passing on wealth to younger generations. When used alongside the various other exemptions available this can be an extremely effective way to mitigate your IHT exposure, currently 40% in excess of any nil rate bands.

Regular gifts out of surplus income can qualify as IHT exempt gifts if a number of conditions are met. This relief can assist in ensuring that the value of your taxable estate does not increase simply because you do not require or spend your regular income.

Gifts must be made from current income: broadly this is understood to be of the same tax year, although some carrying over of income from year to year is permitted. Examples of regular gifts can be in the form of Christmas and birthday gifts, annual family holidays, school fees etc.

After making any gifts, you must be left with enough income to maintain your usual standard of living, including living expenses but also your normal lifestyle costs. This lifestyle must be capable of being maintained without using capital or selling assets. To qualify, these gifts need to be regular (even if annually) and a letter confirming to the recipient that you are making the gift out of your income (setting up the regular payments via bank transfer) should be sufficient.

Please note that such gifts will be exempt from IHT on your death. However, HMRC require details of all such gifts, income, taxes and living expenses in order to evidence gifts out of income. As a result, it is imperative to maintain a formal ledger of your regular expenditure to be shared with your designated executor(s). Form IHT403 gives a useful template to reduce the administrative burden on your estate, ensuring that any IHT tax return (form IHT400) is prepared accurately.

The above generally refers to cash or certain small chattels, however gifts of non-cash assets will usually be subject to Capital Gains Tax (CGT). Gifts to connected parties, such as other family members will have deemed disposal proceeds at market value, despite no consideration being received. Subject to your tax free capital gains tax annual exemption of £12,300 (for the current year) CGT rates are at 10% for basic rate taxpayers and 20% for higher rate taxpayers.

In summary, it is important to ensure that if you are looking at utilising the above relief that your current quality of lifestyle is not affected, whilst ensuring that you maintain good records to summarise any gifts.

Please get in touch with your usual haysmacintyre contact or a member of our Private Client team for advice on planning for IHT.

Do you hold assets on behalf of someone else?

Important changes mean you may have to take action before 1 September 2022.

If you hold assets in your name on behalf of someone else, it is likely you have formed a 'bare trust' which will soon need to be registered with HMRC.

All UK trusts that are created deliberately must be registered, unless they covered by a specific exclusion. Trusts are usually established by a written deed or declaration of trust, but they may also be created orally, particularly in the case of bare trusts.

A bare trust exists where the beneficial owner has the right to capital and income, but legal ownership is in another's name. For example, a share portfolio held in the name of a parent for the benefit of a child, private company shares held by someone as nominee.

Bare trusts are also commonly found in relation to property ownership as property cannot be registered in the joint names of more than four people.

The Trust Registration Service (TRS) is a register of beneficial ownership under trust arrangements. The requirement to register trusts started in 2017 and its scope widened considerably on 6 October 2020. These latest changes are likely to bring many more UK trust arrangements within the scope of TRS.

Bare trusts are among the arrangements that now fall within the requirement to register. All types of trust which have not yet been registered need to do so even if they receive no income or gains.

Certain types of trust will be excluded from the requirement to register, including will trusts, bank accounts for children, disabled person's trusts, charitable trusts and certain life insurance policy trusts, amongst others.

Any trust which has a liability to UK tax must register, even if it is covered by an exclusion.

Generally, trust arrangements must be registered by 1 September 2022. Failure to do so may incur penalties from HMRC.

Our Trusts Team can advise you whether you need to register and deal with the whole process for you. For further information please get in touch.


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Fee Protection Service

We invite our clients to subscribe to our Fee Protection Service (FPS) for tax investigations.

This year we have partnered with a market-leading provider, Markel Tax, which has an excellent reputation within the accountancy profession, in order for us to offer you the best service available.

HMRC enquiries are better targeted and are being undertaken with an unprecedented level of detail and persistence, which last year recovered additional revenues of £30.4 billion through compliance activity despite the impact of COVID-19 on individuals and businesses. Even if you have done nothing wrong, you may still be selected for a detailed review of your tax affairs, which may result in an unnecessarily high tax bill if you are not protected. The cost of defending yourself professionally is potentially huge; enquiries are taking longer and the defence costs are increasing. Even when the outcome of the enquiry results in no adjustments to your tax position, the cost of the defence can escalate. Whether it's a cross-tax enquiry, a technical challenge or a detailed books and records review, our FPS package is designed to get you the best possible result and is why we strongly recommend it to you.

Our FPS package enables us to defend you in the unfortunate case that you are selected for an enquiry without worrying about the cost of our fees. For an annual charge, you can rest assured that you are protected against the professional costs associated with an HMRC enquiry.


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