

Property Agent Matters

Opening the doors to future prosperity

Who's paying a visit this Christmas?

Nobody, including a property agent, is immune from HMRC's general push to increase their tax take. In the run up to the season of goodwill, HMRC have launched a campaign against landlords who try to keep more in their sack than the Treasury do!

HMRC have increasingly targeted their anti-avoidance activity to particular business sectors. A current campaign focusses on let property. This concentrates on the residential property letting market and offers a chance for landlords who have "forgotten" to inform HMRC of their rental income, to get up-to-date and put right any errors they have made. The emphasis after that is on them remaining compliant going forward.

HMRC and the Treasury have estimated that landlords are underpaying tax by £500m each year, although there appears little public evidence to back up that claim. The campaign is going to run for 18 months and offers reduced penalties for those who come forward of their own accord. It was announced by Danny Alexander at the Liberal Democrat conference in September where he stated that up to 1.5 million landlords are in HMRC's sights. HMRC have indicated that any failure to come to them under this campaign could result in criminal proceedings if tax was subsequently found to be due. Any penalty arising from

a voluntary disclosure, however, will be lowered if HMRC have not approached them first.

Again, you have to take the Government's figure of 1.5 million with a pinch of salt. I had a recent experience with a client who received a letter from HMRC, stating they had failed to disclose rental income. This was factually incorrect as it had been disclosed on their tax return. When we contacted HMRC, it was discovered that the individual had been issued two national insurance numbers and, whilst one showed disclosure was made, the other didn't! If HMRC expect others to get their affairs in order, it would be nice if they could set a good example!

At the same time as this campaign, tax reliefs such as the 10% 'wear and tear' allowance available to Landlords have been estimated by lobbyists as costing the Exchequer up to £5bn a year and there have been calls to reduce the tax incentives on offer.

Agents will have an important part to play - having proper documentation to support landlords' claims is key and agents' accounts are normally their principal source of information. We know that HMRC are currently examining what 'good records' look like as part of their Business Records Checks but the basic principals of clarity, completeness and correctness hold good.

You could take this as an opportunity to think about the quality of the information



you provide to your clients. Is it sufficient if HMRC enquired into one of your client's returns? How you present your information is also worth a thought too – is it in a format that is 'tax friendly'? For example, could you look at how you analyse out expenses incurred on the property? Are you using categories that match the tax return categories? Also, do you routinely ask landlords whether they are disclosing their income on their tax returns? If not, it may be worth at least highlighting the current HMRC campaign.

I can't really call HMRC "Scrooge" for launching this campaign. It is only right that landlords, who receive rental income, pay tax on it, if they've made a profit. There are enough reliefs and

Continued overleaf..

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ways to structure your investments to minimise the tax, without resorting to non disclosure. The last thing you want for your clients, however, is for a Tax Inspector; as opposed to Father Christmas, dropping down their chimney on Christmas Eve.

Happily ever after...

Where you have property held outside a business, but used in it, there has always been a tax trap when it comes to claiming Entrepreneurs' Relief (ER) on a future disposal. Transferring property that is used in the family business between spouses or relatives can give you that happy ending you were looking for.

Under the current rules if you personally own a property that is used within your business, and you charge a commercial rent for it (a national insurance free way of extracting money), ER is not available on its disposal. This can cause a significant tax downside when you consider a gain that qualifies for ER gives rise to a rate of 10%, whilst a higher rate gain is 28%.

The problem goes further, as you can't just cease charging rent and expect it all to get better. The period of rental taints the eligibility for ER, for ever. So, you need to reset the clock. The easiest way to do that is to transfer the property to your spouse or relative so that they hold it for 12 months (without generating a rental income of course) prior to a disposal. If you do this, they may be able to dispose of the property at the 10% tax rate.

As with most things tax, however, life is never that straightforward, and you need to make sure all qualifying conditions are met. The key thing is, to ask for advice at an early enough stage so that restructuring can take place to give you the happy ending I am sure you will want.

Ghost of Christmas Presents

Bob Cratchit got a turkey. Eventually. What will you be able to give to your teams without any cries of 'humbug' echoing around your offices?

2013 has seen an improvement in the property market and my agent clients

are, in the main, quite confident at the moment. Hopefully, 2014 will build on that. However, come rain or shine, it's always important to keep your staff happy, rewarding them for hard work done and incentivising them to do even better next year.

The question is then, how do you offer Dom Perignon, but for Cava costs to your business? Surprisingly, HMRC play a little bit of Santa in this situation – there are quite a few tax reliefs that you could take advantage of with their blessings.

First of all the Christmas party. Repairs to the photocopier will normally be deductible should things get a little 'lively' but what about the party itself? As an annual event, the party is an allowable expense for you as the employer and is a tax free benefit for the employees so long as the following conditions are met:

- The total cost, including transport and any incidental accommodation is no more than £150 (including VAT) per head. If the cost is just over £150 per head then the whole cost is subject to tax and NIC and not just the amount over £150; and
- The party is open to all staff (or all staff at a particular location).

Photocopiers aside, employees' partners can be invited to the party, but if partners are invited all staff must be entitled to bring a partner. The £150 limit per head is for all the people attending (not just the employees). It's worth noting that unless you are on the Flat Rate VAT scheme you can only reclaim VAT on the costs relating to employees and not their partners. But be warned - the £150 exemption is based on the number of people attending the event. So if someone has accepted an invitation but does not actually attend it could cause a tax liability for all the party goers. Get someone with a clipboard to check who turns up!

What about presents or bonuses? The latter is easy – cash bonuses are always taxable on the employees so either gross up what you give them or make sure they understand that HMRC want to join in the fun.

Perhaps more pleasant and certainly cheaper for employers are (certain) non

cash gifts. They may crave Dom Perignon but Cava will please the Inspector more – 'trivial' gifts can include an 'ordinary' bottle of wine as stated in HMRC's Guidance Manual. An employer may provide employees with a seasonal gift, such as a turkey, an ordinary bottle of wine or a box of chocolates at Christmas without having to declare it as a benefit in kind. Of course, you can present them with a crate of caviar but there will be income tax to pay as a benefit. The good news is that you can claim a business expense in any case.

There are limits. If the gift extends beyond trivial, for example from a bottle or two to a case of wine the tax treatment may change. We can be your personal shoppers and help you pick the right gift.

May I take this opportunity of wishing you all a very Merry Christmas and a Happy, and prosperous, 2014.



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