

Year end personal tax planner 2009

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saving tax for the fiscal year ending 5th april 2009

1. INTRODUCTION

This booklet seeks to identify the main means by which you can reduce your tax liability before the end of the current tax year. To be of the widest possible use, it is written in general terms and specific account will therefore need to be taken of your own individual circumstances. From 5th December 2005, same-sex couples who are civil partners under Civil Partnership Act 2004 are treated in the same way as married couples for tax purposes. References to spouse in this booklet include civil partners.

If you require any further information or would like to implement any of the points described in this booklet, please contact the partner or manager that you normally deal with at Wilkins Kennedy. With regard to advice on investments you are recommended to seek advice based on your particular circumstances and financial profile from an Independent Financial Adviser.

2. TAX SHELTERS

2.1 Pension Contributions

A new pensions regime commenced on 6th April 2006 ("A Day"). The maximum pension contributions which can be made by employees and self employed people aged under 75 on which tax relief can be claimed is the greater of the following:-

- a) £3,600 for people with no earnings or earnings of up to £3,600;
- b) the person's relevant earnings up to a maximum of £235,000.

Tax relief is given in the year of payment of the pension only - the previous rules regarding carry back and carry forward of reliefs ceased to apply on 5th April 2006.

Employees paying into an occupational pension scheme will generally have their contributions deducted from gross pay thereby giving tax relief at source. In the majority of other situations pension payments are made net of basic rate tax with higher rate tax relief being claimed through the person's annual self assessment Tax Return. There is a lifetime limit on a person's pension pot of £1.65million, increasing to £1.8million by 2010/11 and frozen thereafter until 2015/16.

The new pension rules, in many circumstances, enable people to make much greater tax relievable pension payments than in previous years. Subject to expert advice, in certain cases it may be possible to contribute sums greater than the maximum of £235,000. In the light of this a review should be undertaken of your 2008/09 position at the earliest opportunity, particularly in the following situations:-

- earnings in the range of £3,600 - £235,000 in 2008/09;
- retirement in 2008/09 or the next few years;
- moving overseas;
- uneven pattern of employment or self-employment earnings;
- earnings above £235,000 for 2008/09

Finally, it should be noted that under "A" day transitional arrangements, certain elections must be registered with HM Revenue & Customs by 5th April 2009. With the freezing of the lifetime allowance at £1.8m until 2015/16 the protection offered by the elections may be relevant for more people than originally thought. Please contact us if you require advice on this matter.

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2.2 Enterprise Investment Scheme (“EIS”)

Income tax relief at 20% is available on new subscriptions of ordinary share capital in unquoted trading companies providing that all the conditions of the EIS scheme are met. The maximum investment qualifying for relief is £500,000. Capital gains on the realisation of the EIS investment are tax free providing the EIS shares are held for three years.

It is also possible to **defer** capital gains tax by making an investment in EIS shares. The investment must be made within a period of one year immediately preceding or three years immediately following the date when the capital gain was realised. If the EIS shares are held on death the deferred gain does not crystallise. An additional benefit is that EIS shares held for more than two years usually qualify for business property relief for Inheritance Tax purposes so that no Inheritance Tax is due on death. There are many conditions to be satisfied to secure this relief and advice should be taken based on your particular circumstances.

2.3 Individual Savings Accounts (“ISAs”)

Both husband and wife can invest up to £7,200 in an ISA for 2008/09. There are separate limits in the ISA for components relating to shares and cash. Income and gains are free of UK income and capital gains tax.

Children aged 16 or over can also invest in an ISA.

2.4 Enterprise Zone Property

Investment to acquire commercial property in designated Enterprise Zones is highly tax efficient, but may be risky on commercial grounds. An individual investing can offset the gross amount invested, less the land element of the property, against income for tax purposes. Enterprise Zone properties normally need to be held as an investment for a very long period (normally 25 years) and a sale before the end of the 25 year period may give rise to a claw back of the tax relief. Please contact us for further information.

2.5 National Savings Tax Free Investments

The following are tax free subject to National Savings Conditions and Terms:-

Premium bonds	(maximum investment £30,000)
Index Linked Savings Certificates	(maximum investment £15,000 for each issue)
Fixed Interest Savings Certificates	(maximum investment £15,000 for each issue)

2.6 Friendly Societies

Tax free concessions are available on Friendly Society bonds. These must be held for at least ten years. The legislation permits an annual maximum contribution of £270.

Investment in these National Savings products does not affect any other tax free investments held such as PEPs, ISAs and TESSAs.

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2.7 Venture Capital Trusts (“VCTs”)

30% income tax relief is available up to a maximum investment of £200,000 when you subscribe for shares in a VCT, which is basically a closed ended quoted investment vehicle looking to invest in small unquoted trading companies. Dividends and capital gains from the VCT are tax free provided the VCT is held for five years. Note that there is no tax relief for acquisition of VCT shares other than through subscription - this is likely to be reflected in the market price. For tax relief in 2008/09 the VCT shares must be issued to the subscriber on or before 5th April 2009.

Capital gains cannot be rolled over into VCT investments.

3. TAX PLANNING CHECKLIST

3.1 Wills

The Inheritance Tax consequences of trusts created by wills has changed and many wills will need to be reviewed or re-written. Sometimes changes can be made to preserve tax efficiency and to reduce the impact of Inheritance Tax on the trust fund. Wills also need to be reviewed in the light of the Chancellor's Finance Act 2008 legislation enabling a spouse's unused nil rate band to be transferred to the surviving spouse where the surviving spouse or civil partner dies on or after 9th October 2007. This obviates the need in many cases for nil rate band discretionary will trusts.

3.2 Inheritance Tax

Inheritance Tax can be a heavy burden for even relatively modest estates. A number of past Budgets have seen changes designed to stop certain Inheritance Tax planning techniques. It is therefore important to review the current planning opportunities available on a regular basis and follow this up with the necessary action. Effective planning at the right time should enable the potential exposure to inheritance tax in a person's estate to be substantially mitigated.

The currently favourable “potentially exempt transfer” regime for lifetime gifts between individuals may be susceptible to a change of policy so it may be sensible to hasten any tax planning of this kind. However, the capital gains tax implications of such gifts must be borne in mind. With the decline in many share, property and other asset values over the past year, there is a window of opportunity to gift assets to the next generation, either directly or using a trust, with reduced exposure to capital gains tax. A careful review of all assets and their values should be taken in formulating a plan of action to mitigate inheritance tax.

The transfer of assets between spouses can be beneficial as such transfers are generally exempt and may ensure that both spouses' nil rate bands for Inheritance Tax are fully utilised.

There are certain Inheritance Tax pitfalls which need to be avoided. For example, business property relief may in some cases be lost if any shareholders' or partnership agreement is not drafted properly.

If a family member has died recently consider whether a deed of variation will reduce any Inheritance Tax liability.

In certain circumstances trusts can usefully be set-up to assist in Inheritance Tax planning. Trusts can be used to pass wealth down the generations and to hold shares in family companies. Life cover and death in service benefits may be written under trust to mitigate tax liabilities, but the effectiveness of this will depend upon personal circumstances. With the decline in asset values, nil rate band trusts (£312,000 for 2008/09) may be more attractive not least because any future growth in value will be contained within the trust structure. Trusts can, in appropriate circumstances, effectively be used in conjunction with investment bonds as part of an inheritance tax solution where a person can afford to give away capital. Both tax and investment advice from an Independent Financial Adviser is required to evaluate the appropriateness of such an arrangement.

Inheritance Tax is broadly charged on assets held at death and all gifts made within seven years of death. However an individual can give up to £3,000 per annum away tax free even if he does not survive seven years. This exemption can only be carried forward for one year at a time, thus if you did not use the 2007/08 exemption you could gift £6,000 by the end of the tax year.

Additionally, any number of small gifts up to £250 can be given but not to the same person. Regular gifts out of surplus income can also be exempt from IHT providing all the necessary conditions are met.

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3.3 Capital Gains Tax

Husband and wife each have a capital gains tax annual exemption of £9,600. Please review any disposals you have made since 6th April 2008 in order to ensure that you are fully using the exemption wherever possible.

If you have not utilised your annual exemption, please note that the previous method of crystallising gains by selling shares and repurchasing the next day ("bed and breakfasting") no longer works. Any shares sold and repurchased within a 30 day period will be matched, so the gain or loss that would otherwise have arisen on the shares will not be realised. Crystallisation of gains to use the annual exemption can, with careful planning, be achieved by selling shares and reacquiring them in an ISA. Alternatively your spouse may wish to repurchase the shares in his or her own name.

Taper relief and indexation were abolished with effect from 6th April 2008 and a flat rate of 18% for all capital gains generally applies for individuals and trustees. A 10% tax rate will continue to apply to the whole or part of a gain if the disposal qualifies for Entrepreneurs Relief. This relief will generally apply to gains arising on disposals of trading businesses and to gains arising on certain disposals of shares in trading companies.

With the fall in asset values there is a window of opportunity to consider making gifts to family members with a much reduced or possibly nil capital gains tax exposure. There may be the possibility of reorganising family shareholdings and the extraction of assets to shareholders tax efficiently.

Low asset values also assist in restructuring assets held within offshore structures for non - UK domiciled individuals. However, consideration of all the circumstances and other taxes is required as this is a complex area of tax legislation.

Where assets are standing at a loss it may be advisable to realise the loss either to set off against current year gains or to carry the loss forward. Where a loss on shares originally subscribed for in unquoted trading companies arises (or a negligible value claim is made) it may be possible to relieve this loss against income so that the effective rate of tax relief is 40% rather than 18%. A number of rules must be satisfied to claim this relief. A loss on EIS shares may qualify for this relief.

Negligible value claims can be made even if the asset has not actually been sold or disposed of (e.g. in the case of a company going into administration) although such a claim should be made prior to the company being struck off.

If you have used your annual exemption, but your spouse has not, consider transferring shares to him or her prior to a disposal.

Capital gains can be deferred by investing in EIS shares. An investment in EIS shares in the current year may enable capital gains tax paid on gains in the previous three years to be reclaimed. This may shift capital gains from a year when 40% tax was paid to a year when 18% tax is payable.

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3.4 Company Cars, Car Fuel and Company Vans

The taxable car benefit of a company provided car is calculated as a percentage of the list price depending on industry agreed carbon dioxide emissions for the particular make and type of car. There is no discount for the amount of business mileage. If you are considering changing your company car it is worthwhile checking the carbon dioxide emission rating of the chosen model and the resultant taxable car benefit. Choosing a low emission or "hybrid" car can lead to significant tax savings.

The taxable benefit for employees for company provided fuel is calculated by multiplying £16,900 by the percentage used for the car benefit calculation. This system produces some winners and some losers and it is worthwhile reviewing your own circumstances to calculate the financial impact.

Tax savings may arise by choosing to pay personally for all fuel and to charge the employer with an agreed fuel rate for business mileage. HMRC have issued guidelines as to the amounts that can be paid by an employer without any liability to income tax or Class 1 NIC and the guideline figures will be accepted for VAT purposes.

The taxable benefit of a company provided van which is available for private use is £3,000 regardless of the age of the van. The taxable benefit of a company provided van is reduced to Nil if the van is made available to the employee mainly for business travel and the terms on which it is made available prohibit its private use, otherwise than for the purposes of "ordinary commuting".

3.5 Share Options

If you hold share options under either an approved or unapproved scheme careful consideration should be given to the timing of the exercise of the options and the disposal of the shares acquired to minimise the exposure to capital gains tax and/or income tax.

3.6 Independent Taxation of Husbands and Wives and Civil Partners

Many taxpayers will have arranged their affairs to ensure that both spouses or civil partners are fully utilising their tax allowances and reliefs. However, in certain situations it may still be advisable to transfer income producing assets to the other spouse in order that income can be taxed at a lower rate. This, however, is subject to the "settlements" legislation.

3.7 Charitable Giving

Higher rate tax relief can normally be obtained on Gift Aid (no minimum amount) and on charitable Deeds of Covenant. The charity itself can also receive a generous tax rebate on such sums. Please consider therefore doing this before 5th April 2009.

Additionally, if certain shares and securities (mainly quoted shares) are gifted to a UK charity then a deduction from income can be claimed for the market value of the shares at the date of the gift. Land can also, in certain circumstances, be gifted tax efficiently to a charity. No capital gains tax arises on the gift to charity. This is a significant relief at the taxpayer's marginal rate of tax.

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3.8 Tax Efficient Borrowings

Tax relief is generally available on loans (not overdrafts) taken to invest in a partnership or a family company. In certain circumstances if you are a partner or shareholder in an unquoted company it may be possible to restructure your borrowings so as to obtain a higher rate of tax relief on more of your borrowings.

3.9 Children's Income

Everybody, including children, is entitled to a personal allowance (deductible against income) of £6,035. However if the income of unmarried children under 18 derives from assets passed from the parents (other than interest on National Savings Children's Bonus Bonds), this will be taxed on the parents if it exceeds £100. Children's personal allowances can be used against income on gifts from persons other than parents.

If a parent is providing funds to enable their 16 or 17 year old child to invest in an ISA in 2008/09 it is important to note that the interest in the ISA will be taxable on the parent under the above rules.

A "bare trust" set up by parents for their children is no longer effective for income tax purposes. However, gains generated in a bare trust are generally taxable on the child and may be covered by the child's annual capital gains tax exemption. Please seek professional advice before setting up a bare trust as this is an area which has been under review by HM Revenue & Customs.

If children are beneficiaries of trusts (other than those funded by parents) and have not used their annual personal allowances, the trustees should consider making distributions prior to 5th April 2009. This may enable the beneficiaries to obtain a tax repayment for 2008/09.

3.10 Children/Grandchildren: Personal Pension Plans

A parent, grandparent or other relative can make contributions into a personal pension plan for children. Contributions are paid net of basic rate tax. As the maximum gross contribution that can be paid into a personal pension plan is £3,600 per annum, in effect the actual contribution by the parent or grandparent is £2,880. The Government adds the balance of £720 to the fund. The child will be unable to benefit from the pension until the appropriate age (55 years for personal pensions). For further details on personal pension plans please contact us.

4. TAX CREDITS

The child tax credit (CTC) is income related support for children, and does not depend upon parents working. The working tax credit (WTC) assists the lower paid with a wage top-up.

CTC is payable to all parents over the age of 16 whether married, unmarried or single. To benefit from CTC families need to have an income of £58,000 or less (increased to £66,000 if at least one child is under the age of one).

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WTC can be claimed by disabled workers and parents over the age of 16 who work for a minimum of 16 hours a week. People without children can claim provided that they are over the age of 25 and work a minimum of 30 hours a week.

The calculation of the amount of CTC and WTC due to a family is complex. Entitlement is worked out by HMRC once all the relevant information has been provided on HMRC's claim form. Claim forms should be submitted direct to HMRC and the rules allow a 3 month time limit for back dating claims. Tax credit awards need to be renewed annually.

It is worth remembering that increases in income of up to £25,000 from one year to the next can be disregarded for CTC purposes and this can give planning opportunities where matters such as trading losses arise or significant pension contributions are made.

HMRC's help line regarding CTC and WTC tax credits is 0845 300 3900. Application and renewal of tax credit awards cannot presently be made online. Information is available on the HMRC website www.hmrc.gov.uk under Tax Credits and further details can be obtained by post or face to face at HMRC enquiry centres.

The new Pension Credit commenced on 6th October 2003 and consists of two parts, a guarantee credit and savings credit. Individuals must be 60 and 65 respectively to claim the latter credits. HMRC's helpline is 0800 99 1234 and further information is available on www.thepensionservice.gov.uk.

5. EXECUTORS OF ESTATES

Executors need to consider a number of issues for both inheritance tax and capital gains tax where asset values have fallen since death. In particular, if "qualifying" investments (mainly quoted shares/unit trusts) are sold at a loss within 12 months of death, the value received on sale can be substituted in the inheritance tax account. The gross sale proceeds of all land sales within four years of death can also be substituted in the inheritance tax account. Such a claim may enable a refund of inheritance tax to be claimed by the executors, and prevent a loss arising for capital gains tax purposes. Executors should take advice on the timing of asset sales, valuations and the tax implications of any proposed action.

6. A SUMMARY OF CHANGES DUE TO TAKE EFFECT 2009/10

a) Residence and domicile

2009/10 will be the second tax year of the tax changes relating to residency and non UK domiciled individuals. For the purpose of tax residence from 6th April 2008 a day that a person is in the UK at midnight is counted as a day in the UK.

For non UK domiciled individuals who have been resident in the UK for 7 out of the previous 9 tax years i.e. all individuals who arrived in the UK before 6th April 2002, tax is payable on worldwide income and capital gains from 6th April 2008, subject to making a claim for the remittance basis of taxation. If such a claim is made an annual levy of £30,000 is payable and tax is due on remitted income and gains to the UK. However, if overseas income and gains in a tax year are below £2,000 the remittance basis of taxation will apply automatically without payment of the £30,000.

No personal or annual capital gains tax allowances are available if the remittance basis of assessment is claimed.

The new rules are complex and we would recommend advice is taken in respect of any proposed transactions and generally in relation to the new regime of remittances.

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b) **Income Shifting**

The Government had proposed legislation to prevent income being transferred between individuals to secure a lower rate of tax. The rules were originally to come into force from 6th April 2008, but then delayed to 5th April 2009. In the Pre Budget Statement of 24th November 2008 the Government announced that they would indefinitely delay bringing in the new law.

c) **Car Vehicle Tax**

With effect from 1st April 2009 the current seven different bands of vehicle tax will be expanded to 13 for cars registered after 1st March 2001. These bands are based on the CO₂ emissions of the vehicle. Cars with emissions below 100 CO₂ (g/km) will pay no vehicle tax whereas those in excess of 255 CO₂(g/km) (if registered on or after 23rd March 2006) will pay £405 after 1st April 2009.

d) **VAT**

The cut in the VAT rate from 17½% to 15% which took place on 1st December 2008 will end on 31st December 2009.

e) **Small Companies rate of Corporation Tax**

In the Chancellor's Pre Budget Report of 24th November 2008 it was announced that the proposed increase in the rate of Corporation Tax for smaller companies from 21% to 22% scheduled to apply from 1st April 2009 would be deferred until 1st April 2010.

f) **Loss Carry Back**

In the Chancellor's Pre Budget Report of 24th November 2008 it was announced that business trading losses can be carried back for a maximum period of three years (previously 1 year). However, there will be a maximum loss carry back of £50,000 to the earlier two years of the three year carry back period. For unincorporated businesses this relief will apply for losses in accounting periods ending between 6th April 2008 and 5th April 2009. Businesses in such circumstances will be in a position to claim tax refunds for earlier tax years.

For unincorporated businesses that do not have a 31st March year end there may be benefits from changing the year end. In appropriate circumstances this can allow trading losses to be used earlier than would otherwise be the case and also for overlap profits to be used. This is a fairly complex area and detailed calculations are needed to see whether this would be worthwhile.

7. **CONCLUSION**

We trust that the above summary is helpful. As ever, it is important to take into account your own particular circumstances and to take specific advice. Many of the items mentioned above will not in themselves make a dramatic impact on your tax liability, but we recommend that maximum advantage is taken of the tax reliefs and exemptions while they last.

This Year End Personal Tax Planner is not intended to be a comprehensive review of all tax related year end issues or a statement of the law. No liability for omissions, errors of fact or opinion contained herein is accepted. Please take professional advice based on your specific circumstances before undertaking any action or investment.

If you would like help on any of the issues mentioned in this update, please do not hesitate to contact the Wilkins Kennedy partner or manager who normally handles your affairs or any of the following:-

LONDON

Bridge House, London Bridge, London SE1 9QR
Tel: 020 7403 1877 Fax: 020 7403 1605
Email: london@wilkinskennedy.com

AMERSHAM

Risborough House, 38-40 Sycamore Road,
Amersham, Buckinghamshire HP6 5DZ
Tel: 01494 725 544 Fax: 01494 431 571
Email: amersham@wilkinskennedy.com

ASHFORD

Stourside Place, Station Road, Ashford,
Kent TN23 1PP
Tel: 01233 629 255 Fax: 01233 643 901
Email: ashford@wilkinskennedy.com

EGHAM (HEATHROW)

Gladstone House, 77-79 High Street,
Egham, Surrey TW20 9HY
Tel: 01784 435 561 Fax: 01784 430 584
Email: egham@wilkinskennedy.com

GUILDFORD

Mount Manor House, 16 The Mount, Guildford,
Surrey GU2 4HN
Tel: 01483 306 318 Fax: 01483 565 384
Email: guildford@wilkinskennedy.com

HERTFORD

Cecil House, 52 St. Andrew Street, Hertford,
Hertfordshire SG14 1JA
Tel: 01992 550 847 Fax: 01992 554 515
Email: hertford@wilkinskennedy.com

HORSHAM (CORPORATE FINANCE)

6 Kings Court, Harwood Road, Horsham,
West Sussex RH13 5UR
Tel: 01992 550 847 Fax: 01403 253672
Email: info@wkcorporatefinance.com

ORPINGTON

Greytown House, 221-227 High Street,
Orpington, Kent BR6 0NZ
Tel: 01403 216690 Fax: 01689 831 478
Email: orpington@wilkinskennedy.com

READING

6c Church Street, Reading, Berkshire RG1 2SB
Tel: 0118 9512 131 Fax: 0118 9512 161
Email: reading@wilkinskennedy.com

ROMSEY

3-4 Eastwood Court, Broadwater Road, Romsey,
Hampshire SO51 8JJ
Tel: 01794 515 441 Fax: 01794 830 705
Email: romsey@wilkinskennedy.com

SOUTHEND-ON-SEA

1 Nelson Street, Southend-on-Sea, Essex SS1 1EG
Tel: 01702 348 646 Fax: 01702 330 148
Email: wk@wkonline.co.uk

WINCHESTER

Parmenter House, 57 Tower Street, Winchester,
Hampshire SO23 8TD
Tel: 01962 852 263 Fax: 01962 841 197
Email: winchester@wilkinskennedy.com

FALKLAND ISLANDS

Globe Offices, Philomel Street, Stanley,
Falkland Islands FIQQ 1ZZ
Tel: 00500 22 918 Fax: 00500 22 918
Email: falklands@wilkinskennedy.com