Tax – what a solicitor needs to know

13th February 2020

Agenda

- Background
- When should/do solicitors and tax advisers interact ?
- Why is it important for solicitors and tax advisers to interact ?
- How can we ensure that these interactions happen to give the maximum benefit to clients?

When should/do solicitors and tax advisers interact?

Versus

When should/do solicitors and tax advisers interact?

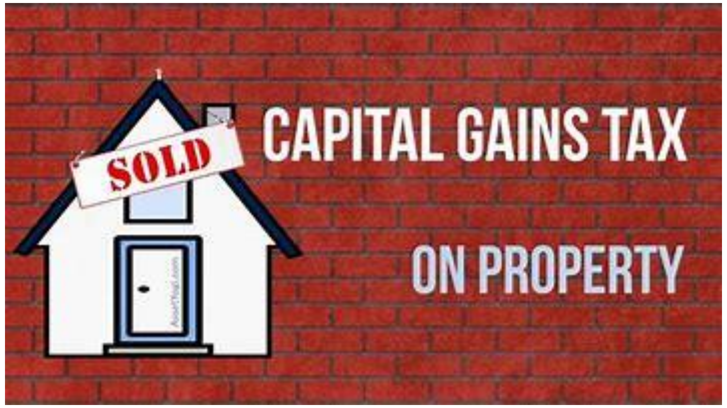
There are two key types of tax related interactions between solicitors and tax advisers :

- Personal tax matters.
- Business/corporate tax matters.

Key areas

- Property.
- Marriage and divorce.
- Succession and will planning.
- Business/company start up.
- Growth and opportunity.
- Exiting from business.

Property



- NRCGT extended as of 6 April 2019.
- New CGT reporting and payment deadlines as of 6 April 2020 for UK residents.

Property - NRCGT

NRCGT

- Introduced in 2015 for gains accruing on UK residential property beyond 1/6 April 2015.
- Requirement to prepare NRCGT filing within 30 days. CGT also payable within 30 days unless filing a UK tax return. Lots of people caught out! Penalties and interest have been charged.
- Extended as of 1/6 April 2019 to all UK immoveable property and commercial property for gains accruing from 1/6 April 2019.
- Also extended to indirect disposals.
- Can apply to companies too.

The below table shows how the tax charges on UK property have changed in the last 5 years:

Property - NRCGT

	UK Residential Property	UK Commercial Property	Shares in companies with diverse UK properties
Before April 2015	UK CGT N/A	UK CGT N/A	UK CGT N/A
From April 2015	UK CGT for gains accruing post April 2015	UK CGT N/A	UK CGT N/A
From April 2019	UK CGT for gains accruing post April 2015	UK CGT for gains accruing April 2019 onwards	UK CGT from April 2019 onwards

Property – CGT

CGT UK resident taxpayers

- New rules as of 6 April 2020.
- CGT on residential property reportable and tax payable within 30 days of disposal.
- No return if satisfied gains will be covered by exemption or brought forward losses.
- Payment made forms another layer of payment on account towards Self-Assessment liabilities for the relevant tax year.
- All gains still reportable as normal on Self-Assessment tax returns.

Is solicitor and tax adviser interaction essential ? – YES!

DON’T FORGET CORPORATE PROPERTY TRANSACTTIONS !

Marriage and divorce

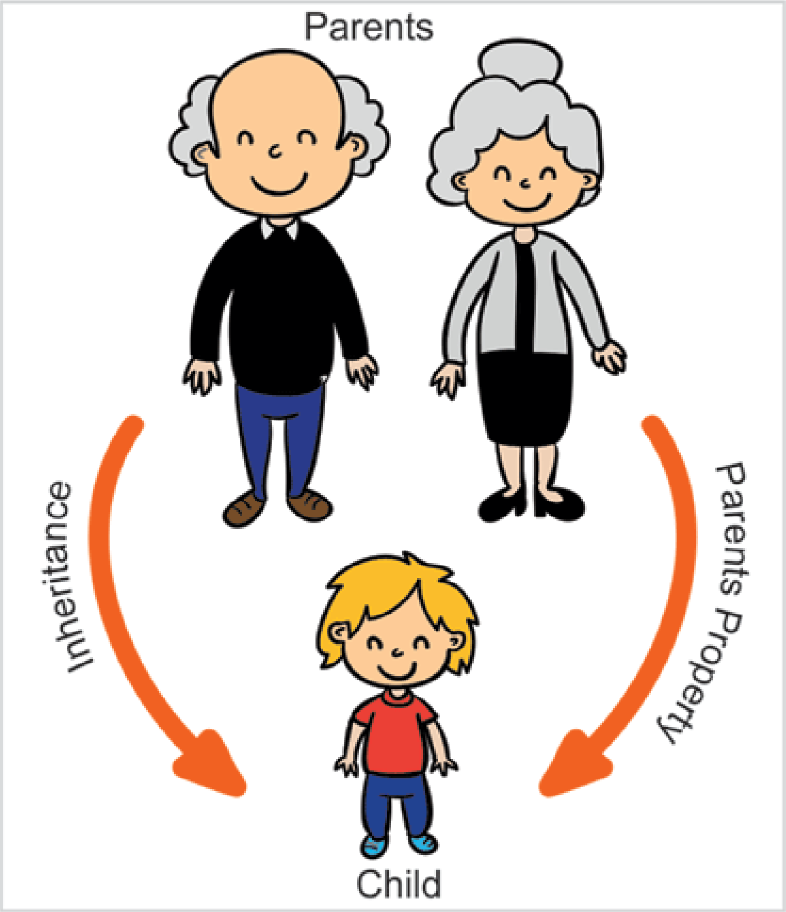
Marriage and divorce

- Civil partners have the same rights and responsibilities as married couples. Watch out for cohabitees especially on property.
- In marriage the main things on which there are tax adviser and solicitor interactions are jointly owned property and IHT/will planning.
- Where property is in joint names between married couples it is taxed jointly unless it is actually owned in differing proportions and there has been an declaration via Form 17 to reflect those proportions.
- Form 17 requires evidence of the underlying proportions owned.
- It is not possible to make a declaration on partnership income, FHL, dividends or shares in close companies.
- Transfer of assets between spouses is tax neutral.
- IHT/will planning requires consideration of who owns what, nil rate bands, residential nil rate bands and underlying rate of tax.

Marriage and divorce

- Tax neutrality on inter spouse transfers is only available in a tax year where the couples live together as spouses or civil partners at some point in the tax year.
- Later transfers even under matrimonial agreement are usually taxable.
- Qualifying business asset gains on transfers after separation but before divorce can be deferred via a joint holdover election under “business gifts relief” legislation.
- There can also be deferral of qualifying business assets after divorce if transferred as a result of Court Order.
- If one leaves the marital home that home ceases to be there principal private residence on departure. This can lead to a partial taxable gain for departing spouse.

Succession and will planning



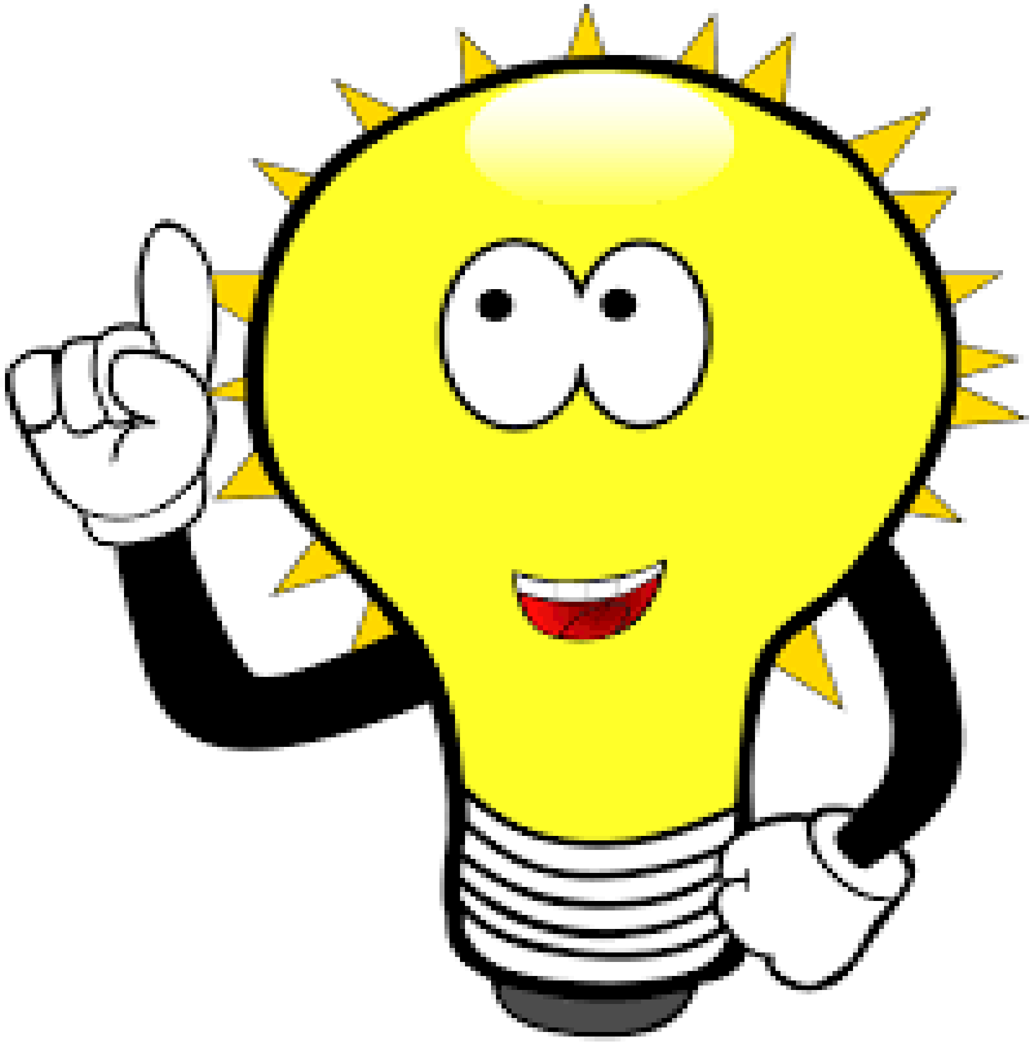
Succession and will planning

- Do clients want/need a will ?
- Are there assets that need protected ?
- What is the underlying IHT liability ?
- Could a tax efficient strategy be implemented ?
- Do we need to discuss with an IFA?
- Where will HMRC consultation get to ?

Business/company start up

Business/company start up

- Great idea so start business.
- Legal requirements to meet – see lawyer.
- Open bank and get started – see banker.
- What are tax implications ? – need tax adviser.



Business/company start up

- Often start as a sole trade or even in partnership
  - Partnership agreement?
  - Need to know how to take accounting profits/losses to adjusted tax profits/losses
  - Need to know what to do with losses often applicable on start up
  - Consideration of payroll for staff – RTI
  - What do they do about VAT?
  - What are their tax filing requirements and payment dates ?
- Do they have only one activity or is it mixed?
- Are they a trader?
- Should they be a limited company and if so when is best time to set up that way ?
- What should their income planning be ?
- Tax implications of incorporation alongside associated legal paperwork. - shareholders agreement?

Growth and opportunity

Growth and opportunity

- Investment
- Incentives - Non tax advantaged scheme v tax advantaged schemes.
- Capital allowances.
- Property

Investment

- Loans
- Share capital
- **Enterprise Investment Scheme (EIS)**
- **Seed Enterprise Investment Scheme (SEIS)**

EIS

- Generous tax reliefs
  - 30% IT relief – can't be connected with the company.
  - CGT relief.
  - CGT deferral.
- Conditions to satisfy for :
  - Investor.
  - The shares – new ordinary shares not redeemable for at least 3 years.
  - The company.
- Monetary limits
  - Individual - £1M
  - Company
- Advance assurance available.
- Compliance statement must be issued to obtain relief.
- Carry back claims available.

SEIS

- Similar to EIS but for much smaller companies generally early stage companies.
- Generous tax reliefs
  - 50% IT relief – can’t be connected with the company.
  - CGT relief.
  - CGT reinvestment relief on half of the reinvested amount. Deferral on remainder.
- Conditions to satisfy for :
  - Investor.
  - The shares – new ordinary shares not redeemable for at least 3 years.
  - The company.
- Monetary limits
  - Individual - £100K
  - Company
- Advance assurance available.
- Compliance statement must be issued to obtain relief.
- Carry back claims available.
- Watch out for order of SEIS/EIS

Incentives - Non tax advantaged incentive scheme

- Pay market value. ✓
- Watch out for interest fee loans if paying by instalments.
- What if they don't pay market value ?
- Watch out for PAYE/NIC requirements if readily convertible assets.

Incentives - Tax advantaged schemes

- Main types :
  - SAYE
  - CSOP
  - EMI
  - SIP

SAYE

- Option to acquire shares in the company in the future at today's price.
- Shares paid for via contributions to SAYE scheme.
- No income tax on grant of options.
- Discounts can be offered but are rare and are normally no more than 20%.
- No charge on the difference between cost and MV when option exercised.
- Contributions between £5-£500 per month for up to 5 years.
- Exercisable within 3 or 5 years.
- Must be available to all FT directors and employees. PT employees can be included but PT directors must be excluded.
- All must participate on similar terms.
- Reporting requirements – by 6 July following tax year.

CSOP

- Unlike SAYE these are “discretionary” schemes in terms of participating members.
- As with SAYE, PT directors must be excluded.
- Cannot participate if you have material interest (generally 30%) in the company (generally close companies), or has had one in the last 12 months.
- Options cannot be granted at a discount.
- Maximum MV of options held £30K.
- No income tax on grant.
- No charge on exercise providing exercised within 3 – 10 years.
- Reporting requirements – by 6 July following tax year.

EMI

- Set conditions for qualifying company, employee and option itself.
- Broadly for smaller, higher risk trading companies.
- Limit on unexercised options for company/group £3M.
- Notice required to HMRC within 92 days of options being granted.
- No tax on grant or exercise if rules complied with. Exercise must be within 10 years.
- If there is tax on exercise watch out for readily convertible assets.
- Company or group gross assets must not exceed £30M.
- Certain trades excluded.
- Can’t have a material interest in the company.
- Must work at least 25hpw or , if less, 75% of their working time.
- Limit on unexercised options per employee £250K.
- Annual declaration by 6 July following tax year.

SIP

- Employees allocate part of salary to buy shares (partnership shares) in employer company.
- Operated through a Trust.
- Must be available to all eligible employees and must not actively discourage participation.
- Maximum annual deduction from salary £1,800 or 10% of salary or less.
- Fee shares can be offered in a tax year up to £3,600 in value.
- Matching of shares can be offered subject to not more than 2 per 1 partnership share.
- No income tax or NIC on shares held in the SIP for 5 years.
- Reporting requirements – by 6 July following tax year.

Capital allowances

- Surely just tax? – NO !
- Biggest issue is re property transactions and "fixtures"
- Several years of problems where seller and purchase claimed different amounts and HMRC were either giving double allowances or involved in complex disputes.
- Rules changes 2012 – yet we still see challenges. Why? It's left too late in process.
- Now only obtain capital allowances if has been pooled pre transfer. Requires apportionment of sale price.
- Either have it agreed via tribunal or joint election within 2 years of sale. My advice have it agreed via election and at point of sale!
- Challenges
  - Having the figures agreed.
  - Transfers to and from non taxable entities.

Property

- CGT
- VAT – Options to tax !
- TOGC – generally 9 conditions for property transactions.
- Timing of option and registering for VAT – really important to get this right.

Exiting from business

Exiting from business

- **Getting structure right.**
- Maximising value.
- Quantifying value.
- Succession or sale ?

Getting the structure right

- Merging activities ?
- Demerging activities ?
  - Traditional demerger.
  - Capital reduction.
  - Liquidation demerger.
- Always involves legal representation but also tax advice.
- Timing – usually requires tax clearance and foresight so think ahead.
- What to they do when they get out !

Why is it important for solicitors and tax advisers to interact ?

- Added value £
- Referrals
- More clients

How can we ensure that these interactions happen to give the maximum benefit to clients?

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