	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Jan.	173.3	178.4	183.1	188.9	193.4	201.6	209.8	210.1	217.9	229.0
Feb.	173.8	179.3	183.8	189.6	194.2	203.1	211.4	211.4	219.2	231.3
March	174.5	179.9	184.6	190.5	195.0	204.4	212.1	211.3	220.7	232.5
April	175.7	181.2	185.7	191.6	196.5	205.4	214.0	211.5	222.8	234.4
May	176.2	181.5	186.5	192.0	197.7	206.2	215.1	212.8	223.6	235.2
June	176.2	181.3	186.8	192.2	198.5	207.3	216.8	213.4	224.1	235.2
July	175.9	181.3	186.8	192.2	198.5	206.1	216.5	213.4	223.6	234.7
Aug.	176.4	181.6	187.4	192.6	199.2	207.3	217.2	214.4	224.5	236.1
Sept.	177.6	182.5	188.1	193.1	200.1	208.0	218.4	215.3	225.3	237.9
Oct.	177.9	182.6	188.6	193.3	200.4	208.9	217.7	216.0	225.8	238.0
Nov.	178.2	182.7	189.0	193.6	201.1	209.7	216.0	216.6	226.8	238.5
Dec.	178.5	183.5	189.9	194.1	202.7	210.9	212.9	218.0	228.4	239.4
	2012	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**
Jan.	238.0	245.8	252.6							
Feb.	239.9	247.6	254.2							
March	240.8	248.7	254.8							
April	242.5	249.5	255.7							
May	242.4	250.0	255.9							
June	241.8	249.7	255.9							
July	242.1	249.7								
Aug.	243.0	251.0								
Sept.	244.2	251.9								
Oct.	245.6	251.9								
Nov.	245.6	252.1								
Dec.	246.8	253.4								

CAPITAL ALLOWANCES

36 Plant and machinery: annual investment allowances

(CAA 2001, s. 51A)

(Tax Reporter: 236-400ff.)

	Maximum (£)
1/6 April 2014 to 31 December 2015	500,000[1]
From 1 January 2013 to 31 March/5 April 2014	250,000[1]
1/6 April 2012 to 31 December 2012	25,000

	Maximum (£)
1/6 April 2010 to 31 March/5 April 2012	100,000
1/6 April 2008 to 31 March/5 April 2010	50,000
Before 1/6 April 2008	–

Note

(1) Temporary increase in the annual invesment allowance initially for the period of two years beginning with 1 January 2013 (FA 2013, s. 7 and Sch. 1) was extended to 31 December 2015 (and increased to £500,000) by FA 2014, s. 10 and Sch. 2, after which the allowance will return to £25,000.

This figure is adjusted pro rata for chargeable periods shorter or longer than one year.

Where a chargeable period spans the above dates of change (i.e. 1/6 April 2014 or 1 January 2016), the maximum AIA is calculated by splitting the chargeable period into separate periods falling before and after each of the dates of change. Transitional rules are then applied to determine the maximum AIA available in respect of the total chargeable period and the maximum AIA that may be allocated against qualifying expenditure incurred in each of the separate periods (FA 2014, Sch. 2; FA 2013, Sch. 1; FA 2011, s. 11).

Groups of companies, companies and qualifying activities carried on by individuals or partnerships, under common control which share premises and carry on similar activities are entitled to a single annual investment allowance only.

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37 Plant and machinery: 100 per cent first-year allowances

(CAA 2001, s. 52)

(Tax Reporter: 237-000ff.)

Subject to the general exclusions, full 100 per cent allowances are available for the following types of expenditure incurred by a business of any size. If full FYAs are not claimed, WDA is normally available on a reducing balance basis.

Nature of expenditure	Authority (CAA 2001)	Notes
Energy-saving plant or machinery	s. 45A–45C	Loss-making companies may claim tax rebate[1,2] (CAA 2001, Sch. A1)
Cars with very low CO_2 emissions	s. 45D	Initially due to end on 31 March 2013, but extended to 31 March 2015 (except for leased cars), with a reduction in the qualifying threshold to 95g/km of CO_2 from 1 April 2013 (previously 110g/km).

Period	Rate %	Residential £	Non-residential £
17 March 2005 to 22 March 2006	Zero	0-120,000	0-150,000
	1	120,001–250,000	150,001–250,000
	3	250,001–500,000	250,001–500,000
	4	Over 500,000	Over 500,000
1 December 2003 to 16 March 2005	Zero	0-60,000	0-150,000
	1	60,001–250,000	150,001–250,000
	3	250,001–500,000	250,001–500,000
	4	Over 500,000	Over 500,000

Notes

(1) From 3 September 2008 until 21 April 2009, the £175,000 threshold only applied to freehold or assigned leases with 21 years or more remaining. The £175,000 threshold does not apply to the residential element of a mixed use property.

(2) The 15 per cent rate applies if the property is acquired by certain non-natural persons (e.g. companies, partnerships with corporate members and collective investment schemes) with effect from 21 March 2012. *Finance Act* 2014 reduces the threshold from £2m to £500,000 where the effective date is on or after 20 March 2014 with the £2m threshold continuing to apply, subject to exceptions, where contracts were entered into before that date.

(3) *Finance Act* 2013 introduced a number of reliefs to reduce the 15 per cent rate to seven per cent with effect in relation to transactions with an effective date on or after 17 July 2013 (Royal Assent). The reliefs will broadly match those where there is relief against the annual tax on enveloped dwellings. However, these SDLT reliefs will apply only if the property continues to satisfy the qualifying conditions throughout the following three years, otherwise, additional SDLT will become payable.

(4) *Finance Act* 2013 introduced legislation to reform the stamp duty land tax rules for 'transfer of rights' with effect from 17 July 2013 (Royal Assent).

Lease rentals

Period	Rate (%)	Net present value of rent: Residential	Non-residential
1 January 2010	Zero	£0–£125,000	£0–£150,000
	1	Over £125,000	Over £150,000
3 September 2008 to 31 December 2009	Zero	£0–£175,000	£0–£150,000
	1	Over £175,000	Over £150,000
23 March 2006 to 2 September 2008	Zero	£0–£125,000	£0–£150,000
	1	Over £125,000	Over £150,000
17 March 2005 to 22 March 2006	Zero	£0–£120,000	£0–£150,000
	1	Over £120,000	Over £150,000
1 December 2003 to 16 March 2005	Zero	£0–£60,000	£0–£150,000
	1	Over £60,000	Over £150,000

Duty on premium is the same as for transfers of land (except special rules apply for premium where rent exceeds £1,000 annually (£600 annually before 12 March 2008)

Until 22 April 2009, if the net present value exceeded £175,000, the charge was on the excess over £125,000.

Finance Act 2013 simplifies reporting requirements that apply when a lease continues after the expiry of its fixed term and where an agreement for the lease is substantially performed before the actual lease is granted and abolishes the rules on abnormal rent increases with effect from 17 July 2013 (Royal Assent).

57 Stamp duty rates

Conveyance or transfer on sale of shares and securities

(FA 1999, Sch. 13, para. 3)

Instrument	Rate of tax after 26 October 1986[5] %
Stock transfer	0.5[1][2]
Conversion of shares into depositary receipts	1.5[3]
Take overs and mergers	0.5[1][2]
Purchase by company of own shares	0.5[1][2]
Letters of allotment	0.5

Notes

(1) Because duty at 0.5 per cent is equivalent to £5 per £1,000 of consideration and duty is rounded up to the next multiple of £5 (FA 1999, s. 12(1)(b)), duty is effectively £5 per £1,000 (or part of £1,000) of consideration.

(2) Loan capital is generally exempt from transfer on sale duty subject to specific exclusions (designed to prevent exemption applying to quasi-equity securities) (FA 1986, s. 79).

(3) *Finance Act* 1986, s. 67(3).

(4) *Finance Act* 2008, s. 98 exempts transfers that would attract duty not exceeding £5. This applies to instruments executed on or after 13 March 2008 (ie. where chargeable consideration less than £1,000).

(5) From 28 April 2014, transfers of securities admitted to trading on recognised growth markets are exempt from stamp duty (*Finance Act* 2014, Sch. 24).

58 Stamp duty reserve tax rates

(FA 1986, s. 87, 93 and 96)

Principal charge

Subject matter of charge	Rate of tax %
Agreements to transfer chargeable securities[1] for money or money's worth	0.5
Renounceable letters of allotment	0.5
Shares converted into depositary receipts[2]	1.5
but transfer of shares or securities on which stamp duty payable	1.0
Chargeable securities[1] put into clearance system	1.5
but transfer of shares or securities on which stamp duty payable	1.0

Note

(1) Chargeable securities = stocks, shares, loan capital, units under unit trust scheme (FA 1986, s. 99(3)). From 28 April 2014, the definition of chargeable securities for SDRT purposes excludes securities admitted to trading on a recognised growth market (FA 1986, s. 99(4A) and 99A).

(2) Following the European Court of Justice judgement in *HSBC Holdings Ltd and Vidacos Nominees v Commissioners for HM Revenue & Customs*, HMRC accept that Article 11(a) of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, as amended by Council Directive 85/303/EEC of 10 June 1985 (now Council Directive 2008/7/EC) ('the EC Capital Directive') must be interpreted as meaning that it prohibits the levying of a duty such as the charge to SDRT imposed by FA 1986, s. 96 on the issue of shares to a depositary receipt issuer or a clearance service located within the European Union.

(3) From 30 March 2014, the stamp duty reserve tax charge for which fund managers are liable when investors surrender their units in UK unit trust schemes or shares in UK OEICs is abolished. Previously, the charge was at the 0.5 per cent rate. Non pro-rata in specie redemptions remain subject to the principle SDRT charge (FA 2014, s. 114).

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252 The meaning of 'office'

An 'office' (see 250) has been judicially described as:

> 'a subsisting, permanent, substantive position, which had an existence independent of the person who filled it, which went on and was filled in succession by successive holders …'

Company directors are the most numerous examples of office holders.

However, a rigid requirement that the office be permanent is no longer appropriate, nor is it vouched by any decided case, and continuity need not be regarded as an absolute qualification. Although an office is often associated with some constituent instrument (creating and defining it but more than a job description), or some degree of public relevance and formality of appointment, none of these is essential.

The question whether a person is the holder of an office is a mixed question of fact and law, involving the application of the facts as found to the proper legal meaning of the word 'office' in the charge on employment income (see 250).

Cases: *McMenamin (HMIT) v Diggles* [1991] BTC 218; *Edwards (HMIT) v Clinch* [1982] BTC 109; *Great Western Railway Co v Bater* [1922] 2 AC 1

Tax Reporter: ¶400-010

253 Employed or self-employed?

Employees are taxed under entirely different provisions from those which tax the self-employed. It is therefore necessary to distinguish an employment from a trade, profession or vocation.

In deciding whether a contract of service exists, all the relevant facts are looked at and weighed in the balance. Some of the more obvious facts are as follows.

For employment	*Against employment*
Control by another over the manner in which the work is performed.	No control by another over the manner in which the work is done.
The person performing the work is restricted from delegating his work to another.	The person performing the work is free to delegate his duties to another.
The person performing the work does not bear the losses nor keep the profits.	The person performing the work bears the losses and keeps the profits.
Tax and National Insurance contributions are withheld by the person for whom the work is done.	No tax or National Insurance contributions are withheld from payments.

For employment	*Against employment*
The parties agree employment.	The parties agree self-employment.
The person for whom the work is done provides the tools and equipment.	The person performing the work provides his own tools.
The person for whom the work is done lays down regular and defined hours of work.	The person performing the work is free to decide when he wishes to work.
The person for whom the work is done cannot withhold payment.	The person for whom the work is done is free to withhold payment until the work is performed as agreed.
The person for whom the work is done can dismiss.	The person for whom the work is done cannot dismiss the worker or cancel the work once the work is agreed, without compensation.
The person for whom the work is done has an obligation to provide work and to pay the 'employee' when no work is available.	There is no obligation to provide the 'employee' with work, or to pay him when no work is available.

Individually, the above points do not prove the existence or otherwise of a contract of employment. The HMRC website gives useful guidance on what HMRC regard as important criteria. However, they are points which influence the decision whether such a contract exists. The list is not exhaustive, and any fact which appears relevant in a particular case is taken into account and considered. The important factor is the actual performance of the contract.

Legislation: ITEPA 2003, s. 4

Cases: *Athenaeum Club* [2010] TC00341; *Sherburn Aero Club Ltd* [2009] TC00006; *Hall (HMIT) v Lorimer* [1993] BTC 473; *Andrews v King (HMIT)* [1991] BTC 338; *Sidey v Phillips (HMIT)* [1987] BTC 121; *Walls v Sinnett (HMIT)* [1987] BTC 206; *Warner Holidays v Secretary of State for Social Services* [1983] ICR 440; *Fall (HMIT) v Hitchen* [1973] 1 WLR 286; *Market Investigations Ltd v Minister of Social Security* [1969] 2 QB 173; *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 2 QB 497; *Davies (HMIT) v Braithwaite* [1931] 2 KB 628

Tax Reporter: ¶400-050

260 Agency workers

In the Autumn Statement 2013, the Government announced a consultation on onshore agencies. The consultation sought to address 'false self-employment' and strengthen existing agency legislation to require agencies to operate PAYE and NIC correctly.

Finance Act 2014 now introduces this tighter regime for agency workers under Pt. 2, Ch. 7.

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are; and whether the employee shares are subject to 'drag-along' or 'tag-along' rights and, if they are, the effect of the shares being so subject.

For the above purposes:

(i) 'company' means a company or overseas company (within the meaning, in each case, of the *Companies Act* 2006) which has a share capital, or a European Public Limited-Liability Company (or Societas Europa) within the meaning of Council Regulation 2157/2001/EC of 8 October 2001 on the Statute for a European Company;
(ii) 'parent undertaking' has the same meaning as in the *Companies Act* 2006;
(iii) the 'value' of shares is a reference to their 'market value', within the meaning of TCGA 1992, s. 272 and 273.

Employee must have prior independent advice

Agreement between a company and an individual that the individual is to become an employee shareholder is of no effect unless, before the agreement is made:

- the individual, having been given the statement referred to in (c) above, receives advice from a relevant independent adviser as to the terms and effect of the proposed agreement; and
- seven days have passed since the day on which the individual receives the advice.

The term 'relevant independent adviser' has the meaning it has for the purposes of ERA 1996, s. 203(3)(c), and includes a qualified lawyer and certain certified trade union and advice centre individuals.

The *Employment Rights Act* 1996, s. 205A(7) stipulates that any reasonable costs incurred by the individual in obtaining the advice (whether or not the individual becomes an employee shareholder) which would, but for this subsection, have to be met by the individual are instead to be met by the company.

Employment law rights surrendered

The employment law rights which the employee gives up by becoming an employee shareholder as above are:

(a) the right to make an application under ERA 1996, s. 63D (request to undertake study or training);
(b) the right to make an application under ERA 1996, s. 80F (request for flexible working), but see further at ERA 1996, s. 205A(8);
(c) the right under ERA 1996, s. 94 not to be unfairly dismissed, but see further at ERA 1996, s. 205A(9) and (10); and
(d) the right under ERA 1996, s. 135 to a redundancy payment.

In addition, the period of notice that an employee must give of her intention to return to work following maternity leave (and corresponding provision for adoption leave) is increased

from eight to 16 weeks; and in the case of an employee's notice of intention to return to work following additional paternity leave, increased from six to 16 weeks.

Tax on acquisition

From 1 September 2013, ITEPA 2003, s. 226A (Amount treated as earnings) applies 'if shares having a market value of no less than £2,000 are acquired by an employee in consideration of an employee shareholder agreement'. An 'employee shareholder agreement' means an agreement by virtue of which an employee is an 'employee shareholder' under ERA 1996, s. 205A (see above). In that case, and provided the shares are not acquired pursuant to an employment-related securities option, an amount is to be treated as earnings from the employment in respect of the acquisition, for the tax year in which the shares are acquired, in accordance with s. 226A(2). Shares are 'acquired' by an employee 'if the employee becomes beneficially entitled to them'.

The amount treated as earnings is:

$$MV - P$$

where:

(a) MV is an amount equal to the market value of the shares;
(b) P is any payment the employee is treated as making for the shares under ITEPA 2003, s. 226B.

But if P exceeds MV, the amount is nil.

'Market value' has the meaning it has under TCGA 1992, Part VIII; and the market value of shares is their market value on the day on which they are acquired.

For the purposes however of ascertaining if shares have a market value of no less than £2,000, such market value is to be determined ignoring:

- any election under ITEPA 2003, s. 431 (election for market value of restricted shares to be calculated as if not restricted); and
- s. 437 (market value of convertible securities to be determined as if not convertible).

But if the £2,000 threshold test is satisfied, then for the purposes of determining the amount treated as earnings under s. 226A, the market value of the shares (MV in the formula) is then ascertained in the normal way, and so for example taking account of any s. 431 election (thus disregarding any relevant restrictions (or relevant specified restriction)), or of the rule in s. 437 (thus determining market value of convertible securities as if they were not).

Tax on events or circumstances during ownership

Although employee shareholder shares are charged to income tax on acquisition under a new, separate charging provision, such shares are 'employment-related securities' for the purposes of ITEPA 2003, Pt. 7, and so subject generally to the provisions of that Part. Such provisions

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> **Example**
>
> A coal merchant buys four tons of coal at £25 per ton and four tons of coal at £15 per ton and ten tons of coal at £20 per ton. He has bought 18 tons at a total cost of £360. If the cost of £360 is divided by the amount 18 tons, the average cost of £20 per ton is arrived at.

Other methods which are used and accepted by HMRC are the 'adjusted selling price' method and the 'standard cost' method. The 'adjusted selling price' is used when it is impractical to value such items at cost individually. In this case, the cost price is taken to be the selling price less the normal mark up. This applies only where the selling prices are full selling prices. This is not normally the position, so HMRC accept value as marked prices less the normal mark up. This 'adjusted selling price' method is quite often used by the department stores.

The 'standard cost' method is a method whereby a standard price is chosen by the trader to be the cost price of his stock. However, this will not be accepted by HMRC unless the standard chosen closely reflects the current market value.

There is also the base stock method of valuation which assumes the necessity for a minimum or basic amount of stock which is necessary for the operation of the business. The base stock is valued at cost as at the date of the manufacturing process to which it relates and quantities in excess of the base stock are valued by some other method. This method is not accepted by HMRC for tax purposes.

Attribution of overheads

There are two accepted methods in arriving at cost.

- The 'direct cost' method which only takes account of the actual cost of the labour and materials used.
- The 'on cost' method or 'indirect cost' method which also takes account of the general overheads, e.g. heating, lighting, etc.

Legislation: FA 2008, s. 37

Cases: *Kelsall Parsons & Co v IR Commrs* (1938) 21 TC 608; *IR Commrs v Cock Russell & Co Ltd* (1949) 29 TC 387; *Rellim Ltd v Vise (HMIT)* (1951) 32 TC 254; *Minister of National Revenue v Anaconda American Brass Ltd* [1956] AC 85; *Duple Motor Bodies Ltd v Ostime (HMIT)* [1961] 1 WLR 739; *BSC Footwear Ltd v Ridgway (HMIT)* [1972] AC 544; *Symons (HMIT) v Weeks* [1983] BTC 18

Tax Reporter: ¶224-000

654 Change from one valid method to another

According to a statement of practice (which was withdrawn on 20 July 1999), when a change is made from one valid method of stock valuation to another (see 652), the opening stocks figure in the year of change must remain the same as the closing figure for the preceding year. Thus, a tax-free uplift cannot be obtained where the opening stocks of one year exceed those of the previous year. See also 636 and 660.

Cases: *Pearce (HMIT) v Woodall-Duckham Ltd* (1978) 51 TC 271; *R v IR Commrs, ex parte SG Warburg & Co Ltd* [1994] BTC 201

Tax Reporter: ¶224-900

660 Stock valuation on discontinuance of trade

Where the cash basis is not being used (see 589) and a trade is discontinued or, except as noted below, is deemed discontinued (see 675ff.), any trading stock belonging to the trade at the time of discontinuance must be valued at market value at discontinuance.

However, if:

- the stock is sold to a UK trader; *and*
- the cost of it is deductible in computing the new trader's profits,

then the value of the stock will be taken to be the price the trader paid for it. For sales taking place after 24 July 2002, it is possible to make a just and reasonable apportionment of the consideration received where stock is transferred along with other assets.

> **Example of rule**
>
> Ten years ago Rupert, an art dealer, bought a painting for £2,000. He does not keep it on open display (or if he does he prices it much too highly). He now ceases to trade, with the painting unsold and worth an estimated £22,000. He cannot avoid income tax by bringing the painting into his final accounts at cost and later selling it privately for £25,000. £22,000 is the figure which he will bring into his final accounts.

> **Example of exception**
>
> Sebastian discontinues in trade. He sells his stock to an unconnected UK trader, Max, who enters the cost of this stock in his books as a deduction. Sebastian can enter into his accounts the price Max paid for his stock. Usually this exception will make very little difference to the basic rule of valuing at market value on discontinuance, since most traders will want to sell their goods at market value.

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Following the *Peter Clay* case, HMRC updated their guidance on trust management expenses, see HMRC *Trusts, Settlements and Estates Manual* 8000–8790. In particular, apportionment of expenses between income and capital may be permitted provided the trustees have sufficient information to justify the proposition that the part apportioned to income was incurred solely for income purposes. As with any self-assessment issue, no query arises until HMRC seek justification for the claimed deduction. A blanket 50 per cent claim against income every year is unlikely to be appropriate. In addition, apportionment must follow the basis upon which charges are calculated. So, for example, Stockbroker fees are unlikely to be apportioned because they charge a composite fee to cover fund management, both income and capital; the charge will not vary whatever results the Stockbroker achieves so cannot be said to be 'wholly and exclusively' for either income or capital purposes.

Income charged on settlor

Income of a settlement is treated as income of the settlor if he or his spouse retains any interest in the trust property or if the income is paid or can be paid, or applied for the benefit of his minor unmarried child. In addition, capital sums paid to the settlor may be treated as his income to the extent that it falls within the amount of income available up to the end of the year of payment. This circumstance would arise if a parent varied a will to redirect their inheritance to a trust for their minor children.

Under current rules where a parent settles funds for the benefit of their minor children, unless the amount of income received by the trust is below the de minimis limit of £100 per parent per child (ITTOIA 2005, s. 629–632), all income arising on the settlement where the settlement was made after 9 March 1999 is assessable on the parent who made the settlement. Accordingly, in general, under current rules establishing an income producing settlement for the benefit of minor children is an unattractive proposition.

The position was different for settlements created before 9 March 1999 where, provided the income is not distributed, it is not assessed on the settlor parent; that position continues today for such settlements. If, however, capital is added to a pre-9 March 1999 settlement, then any income that arises on the added capital is then taxable on the settlor parent in exactly the same way as income arising on a settlement created on or after 9 March 1999; even if that income is not paid out.

If the settlement can invest in non-income producing assets, then the parental settlement rules can be avoided. Equally, the charge on parents can be avoided provided the income, as of right, belongs to the child. Because the child is under 18, it cannot be paid out to them because, until they are 18, they cannot give a valid receipt. However, that means that when the child becomes 18 they have an absolute right to have the income paid out to them. That is likely to raise the traditional concerns that parents and grandparents have about allowing individuals who they still regard as children access to either income or capital at an age where they may not be fully responsible.

Where a tax repayment is available to the settlor, where the income is assessable on him, because his lower rate band and personal allowances are not absorbed by other income, that repayment must be paid to the trustees or the person entitled to the income under the terms of the settlement (see 990).

Further, the income treated as belonging to the settlor is income before deduction of any trust expenses. Therefore, the R185 issued by the trustees to the settlor should show the income assessable at the rate at which tax was deducted at source, without allowance for expenses not the reduced income that would have been assessable at the special trust rates.

Where income arising in a settlement is treated as the settlor's income, he should complete the Trusts page T1, boxes 7–14 after reviewing the guidance in Helpsheet HS 270.

Trustees acting for incapacitated persons

The trustee, guardian, tutor, etc. of any incapacitated person is in a special position. He is assessable and chargeable to income tax to the extent that the incapacitated person would be charged and assessed. This is so where the trustee, etc. has the direction, control or management of the property of the incapacitated person, whether or not that person resides in the UK.

A special tax regime applies (from 6 April 2004) for certain trusts with vulnerable beneficiaries. Such trusts and beneficiaries can elect into the regime and, where a claim for special tax treatment is made for a tax year, no more tax will be payable in respect of the relevant income and gains of the trust for that year than would be paid had the income and gains accrued directly to the beneficiary.

Income and gains arising from the property held on qualifying trusts for the benefit of a vulnerable person is eligible for the alternative tax treatment. The special treatment does not apply in cases where the settlor is regarded as having an interest in the property from which the qualifying trust income arose.

Broadly, the amount of income tax relief under this regime is the difference between two amounts. The first of those amounts is what (were it not for the special rules) the income tax liability of the trustees would be in respect of the qualifying trusts income for the tax year. The second amount is the amount of tax to which the vulnerable person would be liable if the qualifying trusts income were that person's own income.

For details on the special CGT treatment available, see 5595.

Legislation: ITA 2007, s. 474; FA 1989, s. 151(4)

Cases: *Reid's v IR Commrs* 14 TC 512; *Dawson v IR Commrs* [1989] BTC 200; *Williams v Singer* [1921] 1 AC 65; *Aikin v Macdonald's Trustees* (1894) 3 TC 306; *Trustees of the Peter Clay Discretionary Trust v Revenue and Customs Commissioners* [2009] BTC 50

Other Material: HMRC *Trusts, Settlements and Estates Manual* 8000 – 8790

Tax Reporter: ¶350-100

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TRANSACTIONS IN SECURITIES: ANTI-AVOIDANCE

1416 Introduction

The provisions aimed at cancelling tax advantages obtained through 'transactions in securities' were first introduced in 1960. At that time, there was no tax on capital profits and therefore if company profits could be extracted in a capital form, rather than as dividends, a significant income tax saving could be achieved. For example, the owners of a company with undistributed profits could sell their shares at a price which reflected those profits and pay no tax.

If the sale was to a dealer in securities, the dealer would extract the profits by way of a large dividend and then sell the company on at a loss which was set against the dividend income, resulting in a repayment of the tax which was, in those days, deducted from the dividend. This was termed 'dividend-stripping'. Even with the introduction of capital gains tax in 1965, it was still advantageous to realise a capital profit rather than receive the same amount as income.

To counter such transactions and others which sought to extract profits from companies in capital form, legislation was introduced by the *Finance Act* 1960 which allowed for counteraction to be taken to cancel out the tax advantage arising from the transaction. These provisions have been largely unchanged over the years until they were rewritten, for income tax purposes, in the *Income Tax Act* 2007, which introduced cosmetic changes in terminology. (The original provisions in the *Income and Corporation Taxes Act* 1988 were then only applicable to companies and have recently been rewritten and incorporated into the *Corporation Tax Act* 2010).

Following an 'Anti-avoidance Simplification Review' launched at the time of the 2007 Pre-Budget Report and a public consultation exercise in 2009, the *Finance Act* 2010 has redrafted the income tax provisions in respect of income tax advantages obtained on or after 24 March 2010. It is claimed that the new provisions are simpler and ensure that 'all relevant transactions that involve tax avoidance are within its scope.'

Legislation: ITA 2007, Pt. 13, Ch. 1

Cases: *Griffiths v JP Harrison (Watford) Ltd* [1963] AC 1

Tax Reporter: ¶339-300

1420 Transactions within the scope of the legislation from 24 March 2010

The provisions which enable HMRC to take counteraction against income tax advantages obtained as a consequence of one or more transactions in securities apply where:

- the individual is a party to one or more transactions in securities;
- either Condition A or Condition B is satisfied (see below);

- the individual's main purpose (or one of his main purposes) in being a party to any one of the transactions is to obtain an income tax advantage; and
- that purpose is actually fulfilled in that an income tax advantage is obtained as a consequence of the transaction or the combined effect of the transactions.

However, an overriding protection from counteraction applies where there is a 'fundamental change in ownership'.

Condition A

This condition is satisfied where:

(1) as a result of the transaction in securities, or as a result of any one or more of a number of such transactions;

(2) the individual receives 'relevant consideration' on which he is not liable to income tax and which is received in connection with:

(a) the distribution, transfer or realisation of assets of a close company
(b) a close company applying its assets in discharging liabilities; or
(c) a transfer of assets between close companies, whether directly or indirectly. (Where this relates to share capital (other than redeemable capital), Condition A only applies so far as the share capital is repaid. For this purpose, any distribution made on a winding-up or dissolution of a company is to be regarded as a repayment of share capital.

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Condition B

This condition is satisfied where:

(1) the individual receives 'relevant consideration' on which he is not liable to income tax and the consideration is received in connection with the transaction in securities or any one or more of a number of such transactions. (Note that Condition A requires the consideration to be received as a result of the transaction, whereas Condition B only requires the receipt of the consideration to be in connection with the transaction); and

(2) two or more close companies are concerned in the transactions in question.

Where a transaction in securities relates to a transfer of share capital (other than redeemable capital), Condition B only applies so far as the share capital is repaid. For this purpose, any distribution made on a winding-up or dissolution of a company is to be regarded as a repayment of share capital.

Relevant consideration

The definition of relevant consideration varies according to its context.

In Condition A where the consideration is received in connection with either a close company disposing of assets or using them to discharge liabilities, it is consideration which:

do not exceed a normal return), and the discharge of an ordinary trade debt, where the credit given is not more than six months.

If the investment in the CDFI was as shares or securities, the investor is permitted to receive some value (ignoring insignificant amounts) from the CDFI before his tax relief is reduced. The permitted levels of receipts are as follows:

- before the 3rd anniversary of the investment date: up to 25 per cent of the invested capital;
- before the 4th anniversary of the investment date: up to 50 per cent of the invested capital;
- before the 5th anniversary of the investment date: up to 75 per cent of the invested capital.

If the value received exceeds these permitted levels, all the tax relief in respect of the investment must be withdrawn.

If the value received is significant but does not exceed these permitted levels, the 'invested amount' is treated as reduced by the value received, in respect of the tax year or accounting period in which the value was received and any later periods.

If the investment in the CDFI was a loan, the receipt of value is treated as being a repayment of the loan made at the beginning of the year in which the value was received. However, if the value was received in the first 24 months of the period of restriction, the deemed loan repayment is treated as being made on the investment date.

Multiple investments

If the investor has made more than one investment in the CDFI and receives a receipt of value within the period of restriction, the receipt of value is allocated against those investments in proportion to the relative value of each investment in the year the receipt of value is received.

Loss of accreditation

If the CDFI losses its accreditation during the five-year investment period, the investor will also lose its tax relief.

Investor becomes accredited

If the investor body becomes an accredited CDFI, it will lose any further tax relief due on investments it has made under this scheme.

Early loan repayment

An investment in a CDFI made in the form of a loan may be partially repaid within the five-year investment period within prescribed limits. If the loan repayments exceed those limits by more than £1,000, or by an amount that is significant compared to the average capital balance of the relevant year of the investment period, all of the tax relief must be withdrawn.

Disposal of investment

Generally, if an investor disposes of all or part of his investment in a CDFI within the five-year investment period, he will lose all the tax relief due on that investment unless the disposal falls within one of the following circumstances:

- as part of the winding up or dissolving of the CDFI;
- as a deemed disposal the investment becomes of negligible value or is lost completely;
- the disposal is made after the CDFI has lost its accreditation; or
- sale of shares or securities as part of an arms-length bargain.

Where the shares or securities are sold, the tax relief due is reduced by five per cent of the sale proceeds. If the shares are sold at book profit, five per cent of the proceeds will be more than the tax relief due so all the tax relief must be withdrawn. If the tax relief attributed to the shares is less than five per cent of the invested amount, say because the tax relief has been limited by the total tax liability of the investor, the reduction in the tax relief due to a sale is also proportionately reduced.

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Example

P Ltd has a calendar accounting period and subscribed for £80,000 worth of shares in an accredited CDFI on 1 March 2003. It sold those shares for £20,000 on the open market on 1 September 2007. The qualifying date for 2007 is 1 March 2008. the tax relief due is calculated as follows:

Year	Tax relief first claimed	Claw-back of tax relief
2003	5% × £80,000 = £4,000	5% × 20,000 = 1,000
2004	5% × £80,000 = £4,000	5% × 20,000 = 1,000
2005	5% × £80,000 = £4,000	5% × 20,000 = 1,000
2006	5% × £80,000 = £4,000	5% × 20,000 = 1,000
2007	Nil	No tax relief due as shares have been sold by the qualifying date.

When an investor disposes of his shares or securities in a CDFI, the normal pool rules do not apply. The shares or securities are treated as being disposed of on a first in first out basis.

Legislation: ITA 2007, Pt 7, Ch 6; FA 2002, Sch. 26, Pt. 6

Tax Reporter: ¶325-000

1968 Information requirements

If an investor disposes of his investment in the CDFI within the five-year investment period or receives a loan repayment or receipt of value that would create a claw-back or restriction a late filing penalty will be issued. HMRC will charge one penalty for each tax month that the employer failed to file on time. However, they will not charge a penalty for the first month in each tax year where the employer failed to file on time (a maximum of 11 fixed penalties can be charged for late filing in a tax year).

A penalty will not be issued to a new employer if their first FPS is received within 30 days of making the first payment to their employee(s). But after that, normal penalties rules will apply if there is a failure to file on time. Employers with nine or fewer employees and who meet certain conditions can take advantage of a relaxation for 2014–15 and 2015–16 (see www.hmrc.gov.uk/payerti/transitional.pdf). This allows them to report PAYE information about all their payments in a tax month on or before the last payday in that tax month.

The size of the late filing penalties depends on the number of employees within the PAYE scheme.

Number of employees	Amount of the monthly filing penalty per PAYE scheme
1 to 9	£100
10 to 49	£200
50 to 249	£300
250 or more	£400

Where a return is late for three months or more, HMRC may charge a further penalty of five per cent of the tax/NICs that would have been paid if the information it provides had been sent on time. HMRC will apply this penalty only for the most serious and persistent failures.

Penalty notices will be issued quarterly at the end of July, October, January and April.

Legislation: *Income Tax (Pay As You Earn) Regulations* 2003 (SI 2003/2682); *Income Tax (Pay As You Earn) (Amendment No. 2) Regulations* 2013 (SI 2013/2300)

Cases: *Thames & Newcastle Ltd* [2014] TC 03790

Other material: HMRC short guide to in-year late filing penalties: tinyurl.com/lqyf5rj

Website: HMRC Real time information: www.hmrc.gov.uk/payerti/getting-started/rti.htm; late filing penalties: www.hmrc.gov.uk/news/paye-late-pen.pdf

Tax Reporter: ¶493-015

2243 Partnership return

Under self-assessment, a partnership return, made by a specified partner or his successor (or a person identified by a given rule), must include a statement of profits, the separate partners being treated as if their share of profits accrued directly to them from a sole trade. The

partnership statement may be for the tax year as well as for the accounting period, and may include details of the allocation of consideration from the disposal of partnership property.

Under self-assessment, for 2006–07 and earlier years, the filing deadline is the later of the dates given by reference to individuals and companies, depending upon whether the partnership comprises solely individuals, solely companies or both; the dates are:

- individuals – later of 31 January following the tax year and three months after the issue of a notice requesting submission of a return;
- companies – later of 12 months after the end of the period for which the return is required and three months after the issue of a notice requesting submission of a return.

In July 2005, Lord Carter was asked to undertake a review of HMRC online services. Following the publication of the *Carter Report*, the Government confirmed that it would accept Lord Carter's revised recommendations for self-assessment filing deadlines for 2007–08 and subsequent returns, namely 31 October for paper returns and 31 January for online returns.

Every partnership return must, under self-assessment, include a partnership statement, showing partnership income (and gains) less charges and allocating the resulting amounts between the partners. Except when HMRC is formally investigating a statement, the partnership has 12 months in which to amend it; HMRC may amend obvious errors. (Such amendments do not preclude penalty charges being imposed for the incorrect completion of the original return.) Any amendment of the partnership statement will be reflected by HMRC in each of the partners' self-assessments. For tax returns up to 2007–08, HMRC could give notice to the taxpayer at any time:

- within one year of the filing date, in respect of a return delivered on time (or amendment made within such time); or
- before the first-quarter day (31 January, 30 April, 31 July or 31 October) falling more than 12 months after the return or amendment is made,

that the return or amendment is being investigated. This is also regarded as notice to each of the partners that their returns are being investigated.

Budget 2007 announced certain changes to the HMRC enquiry windows that affect individuals, trustees and partnerships which complete income tax self-assessment tax returns. Broadly, the changes link the period during which HMRC can enquire into returns to the date the return is received by HMRC. Under the new rules, the enquiry window will close one year after delivery of the return. So where a return is received before the filing deadline the enquiry window will close earlier than under previous legislation.

Following the completion of HMRC's enquiries, the officer of the Board will issue a closure notice. This will either make amendments to the return or state that no amendment is necessary. The taxpayer may appeal against any amendment the officer makes.

Legislation: TMA 1970, s. 12AA, 12AB, 12AC; former TMA 1970, s. 9

Tax Reporter: ¶180-525

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The official view is as follows:

> 'At present, when a director is neither resident nor ordinarily resident in the United Kingdom, the Contributions Agency does not seek payment of Class 1 National Insurance contributions for employment in the United Kingdom as a director if;
>
> (1) the only work they do in the UK is to attend board meetings; *and*
>
> (2) either
>
> (a) they attend no more than ten board meetings in a tax year, none of which lasts more than two days *or*
>
> (b) there is only one board meeting in a tax year and that meeting does not last more than two weeks.'

The rule may be automatically overridden by EEA regulations where they apply (e.g. where a French non-executive director attends four one-day quarterly board meetings of a UK company in the UK) or a reciprocal agreement applies.

Where an *employee* is not ordinarily resident (see 2814) in the UK, no Class 1 liability arises until a continuous period of 52 weeks of residence has elapsed beginning with the contribution week following the date of last entry into the UK. The conditions are that the employee:

- is not ordinarily employed in Great Britain; and
- the employment is mainly employment outside the UK by an employer whose place of business is outside the UK (whether or not he also has a place of business in the UK).

A 'place of business' is officially regarded as being any place from which a person can, as of right, conduct his business, or from which his agent has power to conduct business on his behalf. The premises of a UK subsidiary of an overseas parent company are not automatically a place of business of that parent. An employer who has no presence or place of business in the UK has no secondary Class 1 liability at any time, even when the initial period of 52 weeks has expired and the employee has become liable to primary contributions.

From 6 April 1994, a secondary liability has been imposed on UK host employers to which employees are seconded by overseas businesses with no UK presence, unless they are protected by treaty provisions.

> ***Example***
>
> A Japanese employer seconds a member of staff to its UK subsidiary without his becoming an employee of the UK company. The UK subsidiary is responsible for secondary contributions in respect of the earnings of the employee, though only after the employee has lived in the UK for 52 continuous weeks.

Other Material: *Tax Bulletin*, Issue 79, October 2005 (Employees sent from abroad to work in the UK – time apportionment of earnings for Class 1 National Insurance); *National Insurance for employers of people working abroad*: *www.hmrc.gov.uk/pdfs/nico/ni132/ni132.htm*; *www.hmrc.gov.uk/nic/work/abroad-index.htm*

2806 Persons sent from the UK to work abroad

Where a UK employer sends an employee to work overseas, UK Class 1 liability does not automatically cease immediately. Contributions continue to be due for 52 weeks on all of the employee's earnings from the employment if:

- the employer has a place of business in Great Britain (see 2804);
- the earner is ordinarily resident in Great Britain; and
- immediately before starting the employment abroad the employee was resident in Great Britain.

Ordinary residence

Official guidance is that a person is ordinarily resident in a particular country if he:

- normally lives there, apart from temporary or occasional absences; *and*
- has a settled and regular mode of life there.

It is also stated that a person may be ordinarily resident in:

- a place from which he is temporarily absent; *or*
- in some circumstances, two places at once.

Some of the factors which are considered in deciding whether a person is ordinarily resident in Great Britain are listed as follows:

Factor	Indication that you are
You return to the UK from time to time during the period of employment abroad.	Continued ordinary residence. The more frequent or the longer the returns, the stronger the indication that you are.
Visits to your family who have remained at your home in GB, or holidays spent at your home in GB.	Ordinarily resident.
Visits in connection with the overseas work, e.g. for briefing or training or to make a report.	Not such a strong indication that you are.
Partner and/or children are with you during your overseas employment.	Not ordinarily resident especially if you do not retain a home in GB or only make occasional visits to GB.
You maintain a home in GB during your absence.	Ordinarily resident.
Your home in GB is available for your use on your return.	Ordinarily resident, but if your house has been rented on a long let it is not a strong indication of ordinary residence.

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party (see below). However, it was only possible to do this where the asset was to be sold to a third party and so an election could not be made where an asset was destroyed, where a group company was liquidated or on the making of a negligible value claim. Therefore, the rules currently in place provide a simpler and more comprehensive means of transferring gains and losses within a group.

This election can only be made where:

(a) a chargeable gain or an allowable loss accrues on or after 21 July 2009 to a company (Company A) in respect of an asset;
(b) at that time, Company A and another company (Company B) are members of the same group; and
(c) had Company A transferred the asset to Company B immediately before the time of the accrual, the transfer would have taken place on a tax neutral basis under TCGA 1992, s. 171(1).

Following changes made by FA 2011, an election can now be made in respect of a degrouping charge (see 3645).

There is provision to allow gains or losses to be transferred to a non-resident company provided that the company carries on a trade through a permanent establishment.

Where Company A and Company B have made such an election, the effect is to treat the gain or loss as accruing to company B. The election can be made for all or part of the gain or loss but cannot exceed the amount of the gain or loss. Where the election exceeds these amounts the election is ineffective, a parliamentary reply suggests that there is nothing to prevent a revised election being submitted.

Gains or losses accruing before 21 July 2009

In relation to disposals after 1 April 2000 but before 21 July 2009, it was possible to utilise capital losses in different group companies without an actual physical transfer of the asset involved between group companies on a no gain/no loss basis. Such an election saved the group incurring the compliance costs associated with an actual intra-group transfer.

Where two companies (A and B) were members of a group (see 3625) and one of those companies (A) disposed of an asset to a person who was not a member of a group (C), the two group companies (A and B) could jointly elect for the purposes of corporation tax on chargeable gains that the asset in question was treated as transferred from A to B on a no gain/no loss basis immediately prior to the transfer to C and that B disposed of the asset to C. Furthermore, the actual incidental costs of disposal by A were deemed to be the incidental costs of disposal by B; thus B could get a deduction in computing the chargeable gain on its disposal to C even though B did not actually incur those costs.

The election had to be made on or before the second anniversary of the end of the accounting period of A in which the disposal to C was made.

Legislation: TCGA 1992, s. 171A and 171B

Tax Reporter: ¶753-925 and ¶753-950

3640 Non-UK residents

The ability of companies to transfer assets on a no gain/no loss basis (including across residence barriers) was enhanced significantly from 1 April 2000, with associated anti-avoidance measures applying from 21 March 2000. From that date, membership of a chargeable gains group (see 3625) is not restricted to UK-resident companies. Transfers within the group can be made on a tax neutral basis if the asset remains within the UK tax net. So, for example, a transfer of an asset can be made on a tax neutral basis between a UK resident member of a group and a non-UK resident member of the group if the asset is used by the non-resident member for the purposes of a trade carried on in the UK through a UK permanent establishment.

The change means that for example, transfer of assets are possible between UK-resident subsidiaries with a non-resident parent on a no gain/no loss basis, where the subsidiaries and parent are members of a chargeable gains group. Previously, the transfer between the subsidiaries would have been treated as if the subsidiary making the disposal had disposed of it at market value, irrespective of the actual consideration.

Also from 1 April 2000, the transfer of assets from one company to another company as part of a scheme of reconstruction or amalgamation will attract tax relief irrespective of where the participating companies are resident, provided the assets remain in the UK tax net.

Prior to 1 April 2000, companies which were not UK-resident could not generally benefit from the no gain/no loss provisions (see 3625). However, relief was available in the case of the transfer of a UK branch or agency to a UK-resident company.

Further forms of relief applied in respect of the transfer by a UK-resident company to a company resident in another EU member state of a non-UK branch (see 3490) and in respect of the transfer between EU member states involving at least one non-resident company of a UK branch (see 3495).

If a company ceases to be resident, it is normally required to notify HMRC and to pay tax on any capital gains which have accrued on assets which it holds (though this does not apply to relevant assets that continue to be employed in a UK trade, and so remain within the charge to UK tax). This requirement has been removed in the case of companies which cease to be UK-resident by virtue of the provisions that treat dual resident companies which are not treated as resident in the UK by virtue of a double taxation agreement as not resident for all tax purposes (see 3020). In certain circumstances, any gains which accrued whilst the company was UK resident can, by election, be treated as deferred ('postponed gains') until the assets are sold (or certain other events occur).

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Identification of shares disposed of

In addition to the rules imported from ITA 2007, Pt. 6, Ch. 2 (see above) regarding identification of shares disposed of, a further provision ensures that shares acquired when the company was not an approved VCT are assumed to be disposed of before shares acquired when the company was an approved VCT. Once this provision has been applied, any shares acquired on different days are deemed to be disposed of on a FIFO basis, and shares acquired on the same day are deemed to be disposed of with those shares (if any) which exceed the permitted maximum being disposed of first.

Withdrawal of approval

Where approval of a VCT is withdrawn, then an individual holding shares in the VCT is deemed to have disposed of those shares and immediately reacquired them for their market value. The disposal is deemed to take place whilst the VCT is still approved, so that no chargeable gain or allowable loss arises, but the reacquisition, for the purposes of the share pooling rules (see 5826), is deemed to take place immediately after the company ceases to be a VCT.

Supplementary provisions

Where shares which enjoy different tax reliefs (specified in TCGA 1992, s. 151B(3)) are involved in a reorganisation under TCGA 1992, s. 126, then the shares are treated as being different holdings according to the different tax reliefs they enjoy. If a reorganisation such as a rights issue affects an existing holding, and results in the individual holding shares in a VCT (as defined in TCGA 1992, s. 151B(3)(a)–(c)), then the reorganisation provisions contained in TCGA 1992, s. 127–130 will not apply to the existing holding.

On a reconstruction, the rules contained in TCGA 1992, s. 135, 136 are disapplied where a VCT acquires another company which is not a VCT, or is acquired by such a company.

Legislation: TCGA 1992, s. 151A, 151B(6), (7)

Tax Reporter: ¶565-300

5926 Seed enterprise investment scheme (SEIS)

The seed enterprise investment scheme was introduced from 6 April 2012 as an investment scheme designed to help start-up companies obtain initial investment. Initially introduced for a five-year period only (and due to end on 5 April 2017), the scheme and associated capital gains tax reinvestment relief were made permanent by *Finance Act* 2014. The scheme complements the EIS and venture capital reliefs described above but is designed to precede both schemes and a company which has already raised finance under either the EIS or VCT scheme is precluded from raising finance under the SEIS scheme. The rules have been designed to mirror those of EIS as it is anticipated that companies may want to go on to use the EIS or VCT scheme after an initial investment under SIES.

SEIS provides:

- income tax relief on investment in new shares (with a maximum qualifying investment of £100,000);
- capital gains tax exemption on sale of qualifying seed enterprise investment shares, provided that income tax relief has not been withdrawn; and
- capital gains tax exemption on the disposal of assets where the gains are reinvested in qualifying SEIS shares.

The disposal relief provides an exemption from capital gains tax in respect of a gain arising on the disposal shares where an investor has received income tax relief (which has not subsequently been withdrawn) on the cost of the shares, and the shares are disposed of after they have been held for at least three years. However, if no claim to income tax relief is made, then any subsequent disposal of the shares will not qualify for exemption from capital gains tax.

The reinvestment exemption is available in respect of a gain arising on the disposal of any asset with so much of the gain as is matched with the relevant percentage of qualifying SEIS expenditure being exempt from capital gains tax (subject to the £100,000 investment limit). The relief was originally introduced in respect of gains accruing in 2012–13 and matched with investment in 2012–13 then extended in relation to gains accruing in 2013–14 and matched with investment in 2013–14 but with a limit on the amount that was treated as not being a chargeable gain of 50 per cent of the qualifying SEIS expenditure. The relief was made permanent by *Finance Act* 2014 for 2014–15 and subsequent years at the 50 per cent rate.

The asset does not have to be disposed of first; the investment in SEIS shares can take place before the disposal of the asset, providing that both the disposal and investment take place in the same year. However, investors who make use of the 'carry-back' facility for the purposes of SEIS income tax relief should note that to the extent that shares are treated as issued in the previous tax year for the purposes of income tax relief, those shares will also be treated as issued in the previous tax year for the purposes of reinvestment relief. Accordingly, as gains must be matched with investment in the same tax year, if an investor is issued with SEIS shares in 2013–14 and wants to claim SEIS income tax relief as if all or some had been issued in 2012–13, then the shares treated as issued in 2012–13 are treated as issued in 2012–13 for the purposes of reinvestment relief and reinvestment relief cannot be claimed on gains made in 2013–14 in respect of those shares.

Legislation: TCGA 1992, s. 150G, Sch. 5BB

Tax Reporter: ¶568-500ff.

5927 Social investment tax relief

The social investment tax relief (SITR) is a new scheme designed to support social enterprises seeking external finance by offering a range of tax reliefs to individual investors who invest in

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7168 Dispositions conferring retirement benefits

A disposition made by any person is not a transfer of value (see 7150) if it is a contribution under a registered pension scheme, a qualifying non-UK pension scheme or ICTA 1988, s. 615(3) in respect of an employee of the person making the disposition.

Where the condition is satisfied only to a limited extent, the payment is treated as two separate dispositions: one of which is not a transfer of value, and the other that is.

From 6 April 2011, where a person who is a member of a registered pension scheme, a qualifying non-UK pension scheme or a s. 615(3) scheme omits to exercise pension rights under the pension scheme, there is no transfer of value under IHTA 1984, s. 3(3).

Legislation: IHTA 1984, s. 12(2)–(5), FA 2011, s. 65 and Sch. 16

Tax Reporter: ¶610-800

7172 Dispositions allowable for income tax

A disposition made by any person will not be a transfer of value (see 7150) if it is allowable as a deduction in computing that person's profits or gains for income tax or corporation tax (see 2150ff.).

Legislation: IHTA 1984, s. 12(1), (5)

Tax Reporter: ¶610-600.

7174 Grant of tenancies of agricultural property

Where it is not specifically provided otherwise, the grant of an agricultural tenancy would result in a transfer of value because of the ensuing reduction in the value of the freehold. Accordingly, it is provided that the grant of a tenancy of agricultural property in the UK, the Channel Islands or the Isle of Man for use for agricultural purposes is not a transfer of value by the grantor (see 7150) if he makes it for full consideration in money or money's worth.

Legislation: IHTA 1984, s. 16

Tax Reporter: ¶610-950

7176 Changes in distribution of deceased's estate

Certain changes in the distribution of a deceased's estate are not transfers of value (see 7150):

- a variation or disclaimer made within two years of death (see 6805);
- the renunciation (in Scotland) to a claim to legitim within a specified period (see 6805);

- a transfer within two years of death in accordance with a testator's express wish (but not under the terms of his will) (see 7023); or
- an election by a surviving spouse to have his or her life interest redeemed where the deceased died intestate (the survivor thereafter being regarded as entitled to the capital value).

Legislation: IHTA 1984, s. 17, 145

Other Material: *HMRC Inheritance Tax: Customer Guide* available on the HMRC website at *www.hmrc.gov.uk/cto/customerguide/page1.htm*

Tax Reporter: ¶611-000

TRANSFERS EXEMPT DURING LIFE AND ON DEATH

7192 Transfers between spouses and civil partners

Generally direct transfers between spouses and civil partners are exempt without limit, both during lifetime and on death even where the couple is not living together (but if not living together the CGT exemption may not apply). Where the transferor is domiciled in the UK, but their spouse or civil partner is not, the exempt amount was restricted to £55,000 until 5 April 2013. However, FA 2013, s. 178 increased the foreign domiciled spouse exemption to an amount equivalent to the current nil rate band of £325,000. This change will apply to deaths on or after 6 April 2013 (with an indication that for the future the relief will match any increases in the standard nil rate band).

The increase only applies to transfers of value made on or after 6 April 2013. So, for a period, if domiciled/non-domiciled partners had previously tried to manage their IHT liability by lifetime gifts then before 5 April 2013, there was only the £55,000 limit with any excess deducted from the standard nil rate band (or any transferrable nil rate band but on death only) as a PET whereas gifts made on or after 6 April 2013 will be exempt provided they do not exceed £325,000.

> ***Example 1***
>
> Tony (UK domiciled) is in a civil partnership with Alfredo (who is Spanish domiciled) and in November 2012 he made a gift of £100,000 to Alfredo. He subsequently made a further gift of £150,000 to Alfredo on 1 August 2013. In respect of the first gift, the excess of £45,000 above £55,000 used up part of the available nil rate band of Tony but the second gift will be covered by the inter-spouse/civil partner limit of £325,000 (£120,000 remains – £325,000 – £55,000 – £150,000).

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The judge also held that HMRC could not rely on the fact that telephone filing had been made available to certain businesses to cure the aforementioned human rights breach as it had not been legislated for or properly publicised.

Changes to legislation

Following a formal consultation exercise, *VAT Regulations* 1995 (SI 1995/2518), reg. 25A has been amended to:

- enable HMRC to make a Commissioners' direction approving telephone filing as an alternative method of electronic filing for use by businesses that satisfy HMRC that it is not reasonably practicable for them to use the current method of online filing;
- provide an additional exemption from electronic filing for businesses that satisfy HMRC that it is not reasonably practicable for them to use an online channel with the result that such businesses will be able to file on paper.

Changes to legislation took effect from 1 July 2014.

(HMRC has published HMRC Brief 29/14 that gives guidance on traders who are unable to file electronically).

Failure to pay on time any VAT shown as due on a return can give rise to a liability to a surcharge (see 8516).

Taxpayers with problems paying should contact HMRC as soon as possible. Assistance under the Business Payment Support Service may be available.

HMRC has published VAT Notice 700/45 (October 2011) How to correct VAT errors and make adjustments or claims.

Legislation: VATA 1994, s. 59; *Value Added Tax Regulations* 1995 (SI 1995/2518), reg. 25, 40

8436 Importance of VAT records

Because VAT is ultimately collected at the level of individual supplies, it is important that records should exist of all transactions. This becomes even more important given the provisions for refund of tax, so that one trader may be seeking repayment from HMRC of tax which should have been paid to them by another trader. Not surprisingly, HMRC is anxious to be able to verify that the tax has in fact been paid.

In order to meet this need, HMRC has a general power to require traders to keep such records as they may require. Their general requirements are set out in the *Value Added Tax Regulations* 1995 (SI 1995/2518), Pt. V.

From the trader's point of view, proper records are important in order to prevent HMRC from making assessments for tax which they might reasonably deduce to be due, but which is not in fact due when the full information is examined. The trader also needs to hold evidence when reliefs from tax are sought. Examples include the refund of input tax, and claiming zero-rating for a supply.

Legislation: VATA 1994, Sch. 11, para. 6(1); *Value Added Tax Regulations* 1995 (SI 1995/2518), Pt. V

Other Material: Notice 700, *The VAT guide*; Notice 700/21, *Keeping records and accounts*

Website: *www.hmrc.gov.uk*

VAT Reporter: ¶58-800

8442 General VAT accounting requirements

The general requirements as to record keeping for VAT are set out in the *Value Added Tax Regulations* 1995 (SI 1995/2518), reg. 31. Each taxable person has an obligation to keep and preserve his business and accounting records, copies of all tax invoices issued by him, tax invoices received by him, documentation relating to his imports and exports, and to his intra-EC acquisitions and dispatches of goods, credit notes, debit notes or other documents received which evidence changes in the consideration for supplies made or received, copies of such documents which he issues, and a value added tax account containing information specified in the regulations.

Such records must be preserved for a period of six years, unless HMRC allows a shorter period.

Legislation: *Value Added Tax Regulations* 1995 (SI 1995/2518), reg. 31

Other Material: Notice 700/21, *Keeping records and accounts*

Website: *www.hmrc.gov.uk*

VAT Reporter: ¶58-800

8448 Special VAT record-keeping requirements

Apart from the records needed by traders generally, it should be borne in mind that traders operating special schemes are usually subject to special record-keeping requirements (for special schemes and general records, see 8350ff. and 8442). These may be specified by HMRC in Notices, which have the force of law for this purpose. For instance, a car dealer who wishes to use the second-hand goods scheme for second-hand cars has no legal entitlement to do this unless records are kept in accordance with the scheme rules, providing acquisition and disposal details for each car dealt with under the scheme.

Other areas where special record-keeping requirements arise include retail schemes, retail export schemes, reclaim of pre-registration input tax, bad debt relief claims, and the cash accounting scheme.

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