

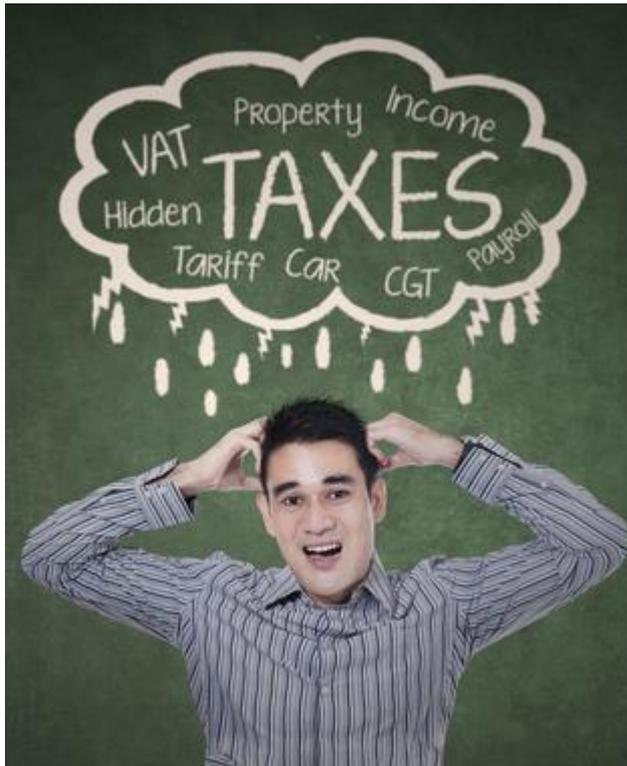
THE IMPORTANCE OF TAX RETURN DISCLOSURE FOR LAND AND PROPERTY

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When the words “Tax Return” spring to mind, immediate word associations for professional advisers could be “31 January deadline” and “income tax mitigation”.

However, high on the list of the priorities is “capital taxes protection”. A key dramatic example of this is the consideration of whether a property trade or activity is shown as self-employed income or on the land and property pages. The disclosure of property income has by definition capital gains tax (CGT) and inheritance tax (IHT) considerations.

It is a certainty that at some point the property will be sold or gifted or the owner will die whilst in ownership of the property. Such statements might appear over simplistic but the tax consequences are significant. What if Rollover Relief or Entrepreneurs’ Relief (ER) for CGT or Business Property Relief (BPR) or Agricultural Property Relief (APR) are needed for IHT?

It is obvious that any Income Tax Return disclosure must not disadvantage any future claim for CGT/IHT reliefs and it follows that for successful capital tax mitigation/planning this should (and must) be thought through from the start.

The Power of the Land and Property Pages

It can therefore be argued that every entry on the land and property pages must be scrutinised. Once a statement (via the Tax Return) has been made that the income is rental there is, it can be argued, no further chance of a claim for Rollover, ER and BPR. In addition, in terms of agricultural land there could be a jeopardy placed on the claiming of APR for the farmhouse.

The IHT Manual gives clear guidance that a weak grazing agreement can jeopardise the claim for APR on the farmhouse.

The key time to “obtain as much information as possible” is in the production of the Accounts that support the trade or if the income is simply included on the land and property pages of the Tax Return. This is a clear reminder of the power of the land and property pages and the need to ask “is this the right disclosure”?

Practical Tip

For tax advisers, review all the land and property pages post the 31 January deadline to ensure that there has been the correct disclosure. Likewise, include a “capital taxes protection” checklist in the preparation of every Income Tax Return. The Tax Return is part of the evidence to support claims for IHT and CGT and at the time of preparation is the ideal moment for the interactive “fact find”.

For probate lawyers and IHT planners, the key point is to review the Income Tax Return at an early stage. Will it help or hinder future IHT reliefs?

Tags: APRBPRCGTIHTTax

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