

Pension payments for non-residents

Although it is generally the rule that, to make any personal pension payments in a year, an individual needs to be resident or ordinarily resident in the UK at some time in the year, this is not always the case. Firstly, where a not resident/not ordinarily resident individual still has some net relevant earnings during a tax year, he is eligible to make payments (subject to the usual limits).

This could be useful where, for instance, there are some UK duties involved in an employment which are not 'incidental' and it is agreed with the Inland Revenue that a modest amount (covered by the UK personal allowance) is taxable in the UK. However small this

sum was, the individual would then be entitled to make a personal pension payment of up to the earnings threshold (i.e. £2,808) net of basic rate tax relief.

Alternatively, where there are no net relevant earnings, an individual can still contribute provided that, at some time in the previous five tax years, he has been resident and ordinarily resident in the UK and was resident and ordinarily resident in the UK when he joined the scheme.

He can then pay up to the earnings threshold or use the cessation of earnings rules to support higher contributions.

SARAH PEARCE
Monahans

Use of farmhouse for bed and breakfast business

The inheritance tax position on a bed and breakfast business carried on at a farm is interesting and one that should be handled with care by the tax planner. It is not an agricultural activity and therefore will not qualify for agricultural property relief (APR). In the current climate the inheritance tax position on the farmhouse should be reviewed regardless of bed and breakfast diversification.

The correct procedure is to claim APR on the agricultural element of the farmhouse and business property relief (BPR) on that part used to carry out the business of bed and breakfasting. Apportionment could prove difficult, subject to the size of the operation and the size of the farmhouse. As with any BPR claim, there must be clear evidence of a genuine business being carried on. In order to qualify for relief part of the farmhouse must be used 'wholly or mainly' for the purpose of a business.

Another potential problem area is where the bed and breakfast business is carried on in partnership, but the asset (the farmhouse) is not owned by the bed and breakfast partnership business – in these circumstances relief could be restricted to 50%. A move towards diversification such as bed and breakfast should not be entered into lightly without the review of all the tax considerations. Sometimes the desire to minimise the charging of VAT could have more complexities than originally envisaged. Also the capital gains tax private residence position must be considered. A bed and breakfast business carried out in property other than a farmhouse should qualify for 100% BPR provided the business conditions are met and the ownership is structured to ensure that 100% rather than 50% relief is available.

JULIE M BUTLER FCA

Pension payments and cessation of self employment

Care needs to be taken where the trade is coming to an end for an individual who is making maximum payments each year into a retirement annuity plan.

Overlap relief due in the final period can wipe out the expected taxable profits, leaving no net relevant earnings to support the final pension payment.

This is not normally a problem for personal pensions since the new rules will mean that it can probably be supported by nominating the best of the last five years and basic rate tax relief has already been received at source.

SARAH PEARCE
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Taper relief – a further instalment

Further to my point of practice dated TPT2002 p152 which concerned taper relief where one spouse (B) gifts shares to the other (C) prior to a sale/disposal, I should perhaps expand on the reference to paragraph 15. The point is that, to qualify as business assets for taper relief, the shares must be held in a company which is a 'qualifying company' so far as the claimant shareholder is concerned, i.e. C. The whole period of ownership is looked at (from the date B acquired them until the date C disposed of them), but so far as usage is concerned, only C's position is taken into account.

The situation for shares is different than that for other assets. For other assets, the qualification period under paragraph 5 for business assets can be fulfilled (for the period prior to transfer) either by the donor spouse (B) or by the donee spouse (C).

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