



Tax Newsletter

November 2014

Welcome to the November 2014 edition of the Argenta Tax & Corporate Services Limited ('ATCSL') Tax Newsletter. The purpose of this Newsletter is to keep Members of Lloyd's informed of tax issues affecting the Lloyd's market. Please do write to us if you would like to see particular issues covered in the Newsletter or have any comments on the articles published. In this issue, we concentrate on the impact of changes to the conversion rules, an important update on IHT and liabilities and some other points on IHT and NIC's.

Conversion Relief – LLP/SLP to Nameco

In the July edition of the Tax Newsletter we reported that legislation will be introduced to enable members of Lloyd's LLPs and SLPs to qualify for a conversion relief should they convert to a Nameco, a UK limited company. The relief should enable any capital gains tax charge associated with the conversion to be deferred into Nameco shares issued as part of the conversion process. Although the legislation has been introduced primarily to help non-resident members convert to a Nameco, there might also be an opportunity for UK residents to make use of this Lloyd's conversion process. Personal circumstances will determine whether the member wishes to benefit from the tax relief or not, in particular, the interaction between income tax, capital gains tax and inheritance tax. We would be delighted to discuss the pros and cons of this type of transaction with you in more detail.

IHT and Loans

Many of our readers will recall that back in April 2013, we flagged an issue introduced by the 2013 Finance Bill which brought in restrictions and conditions that must be met before a liability is allowed as a deduction from the value of an estate. We were particularly concerned with the provision that could affect Lloyd's Members. Where the liability has been incurred to acquire assets which qualify for UK Business Property Relief (BPR) eg an interest in a LLP or shares in a Nameco, the liability will first reduce the value of those assets. The Relief will be restricted to the net value of the assets.

Up until the introduction of this legislation, Lloyd's members have benefitted (where the investment has been appropriately structured) from 100% BPR on their underwriting activities. Those individuals who have borrowed monies secured on a residential property but have invested the borrowed monies in Lloyd's underwriting vehicles are affected. The new rules, which have effect for new liabilities incurred on or after 6 April 2013, prevent the deduction of the liability from the value of the residential property when the beneficial owner of the property dies. This is likely to be an issue for those Members that have borrowed to fund the acquisition of shares in a Nameco where the loan has been secured against other property. It is difficult to see how the rules could be interpreted to disturb an arrangement where assets supporting a Lloyd's LLP or SLP are provided by guarantee or letter of credit (LOC) secured against other assets. We strongly believe that the value of the guarantee or LOC would continue to benefit from 100% BPR (provided that the level of Funds at Lloyd's is not excess in comparison to the level of the vehicle's underwriting).

There has been much debate around the issue of grandfathering provisions for loans in existence at the time of the introduction of the legislation. We believe that the legislation applicable to liabilities attributable to financing assets eligible for BPR (s162B IHTA 1984) is clear. The legislation only has effect in relation to liabilities **incurred** on or after 6 April 2013. This is different from the commencement of the other FA 2013 IHT liability charges. Care must be taken over refinancing pre-2013 loans relating to business property, as that could have the effect of disallowing the liability.

AIM shares and Inheritance Tax (IHT)

If you have acquired or are thinking of acquiring shares quoted on the Alternative Investment Market (AIM) as part of your Inheritance Tax planning, care is required, as not all AIM shares will qualify for IHT Business Property Relief (BPR). For example, areas of concern include:

- The AIM company must show that its business does not consist wholly or mainly of dealing in stocks or shares, land or buildings or making or holding of investments.
- For an overseas company quoted on AIM, it may be difficult to ascertain that the company is carrying on qualifying activities. It is up to the executors to prove that the shares are eligible for BPR.
- If the company has a secondary listing on another recognised stock exchange outside the UK, it would fail to qualify for BPR.

Investors need to regularly review the activities of each company shareholding to ensure they continue to qualify for BPR, which can be an arduous exercise.

If it is identified that an AIM company is about to obtain a secondary listing, or to change its activities, then it is imperative that action is taken before that event. It should then be possible to dispose of the investment and reinvest in another asset that qualifies for BPR. This would enable the new asset to be treated as a replacement asset for BPR purposes and the two year clock would not be reset.

If you become aware that an AIM listed company has already made a change, and no longer qualifies for BPR, then IHT replacement property relief cannot apply. A disposal of AIM shares is a chargeable disposal for Capital Gains Tax purposes.

Class 2 National Insurance contributions on rental income?

In recent months HMRC have been writing to individuals who own rental properties informing them that Class 2 National Insurance Contributions (NICs) should have been paid on rental income.

Class 2 NIC is a flat rate contribution, currently at a rate of £2.75 a week. It is payable by the self-employed on their self-employed earnings.

Although landlords are deemed to operate a “rental business”, this does not amount to being self-employed for tax purposes and so does not require payment of Class 2 NICs. This status is supported by case law (in particular, *Rashid v Garcia*, where a taxpayer argued Class 2 NICs were payable but HMRC argued they were not).

Worryingly, HMRC are sending out these letters without sending copies to the individual’s accountant. We are also concerned that, in light of recent press surrounding new HMRC powers including the potential for HMRC to recover debts directly from a taxpayer’s bank account, some individuals may automatically pay the amounts being demanded.

Although the sums at stake are not material, it is worth ensuring that demands for payment are appropriately challenged to avoid the risks of penalties further down the line.

If you receive such a letter from HMRC, you should contact ATCSL or your accountant.

For further details on the taxation services provided by ATCSL or any further information on the articles included in this newsletter please contact us:

David Powell

Managing Director

Direct tel: 020 7825 7265

E-mail: david.powell@argentapl.com

Stephen Hopwood

Director

Direct tel: 020 7825 7255

E-mail: stephen.hopwood@argentapl.com

Argenta Tax & Corporate Services Limited

Fountain House

130 Fenchurch Street

London EC3M 5DJ

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

