



Practical Tax People

Association of  
Taxation Technicians



Welcome to  
**Sharpen your tax skills**  
an AAT and ATT joint Mastercourse



# **AAT and ATT Joint Conference Autumn 2014 Sharpen your tax skills Delegate slides**

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# Contents

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- Section A - Business tax;
- Section B – Remuneration strategies for OMBs in 2014;
- Section C -Property taxation;
- Section D –IHT and the family home;
- Section E -VAT.

# Section A Business tax

# 1 IR35 – where are we now?

# The legislation –Part 2, Chapter 8 ITEPA 2003

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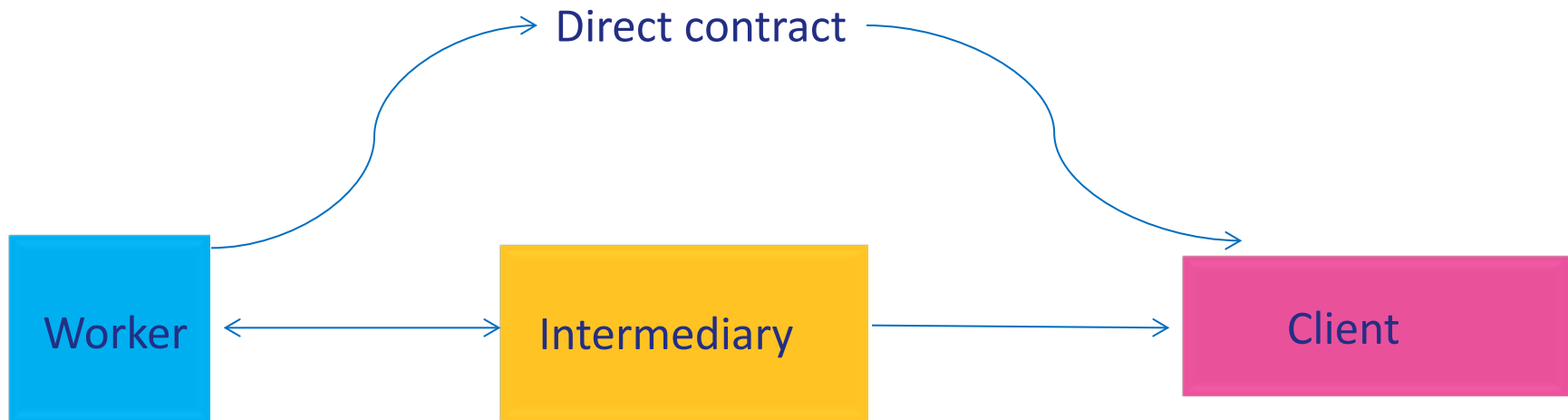
- **S49 Engagements to which this Chapter applies**

(1) This Chapter applies where—

- (a) an individual (“**the worker**”) personally performs, or is under an obligation personally to perform, services for the purposes of a business carried on by another person (“**the client**”),
- (b) the services are provided not under a contract directly between the client and the worker but under arrangements involving a third party (“**the intermediary**”), and
- (c) the circumstances are such that, if the services were provided under a contract directly between the client and the worker, the worker would be regarded for income tax purposes as an employee of the client.

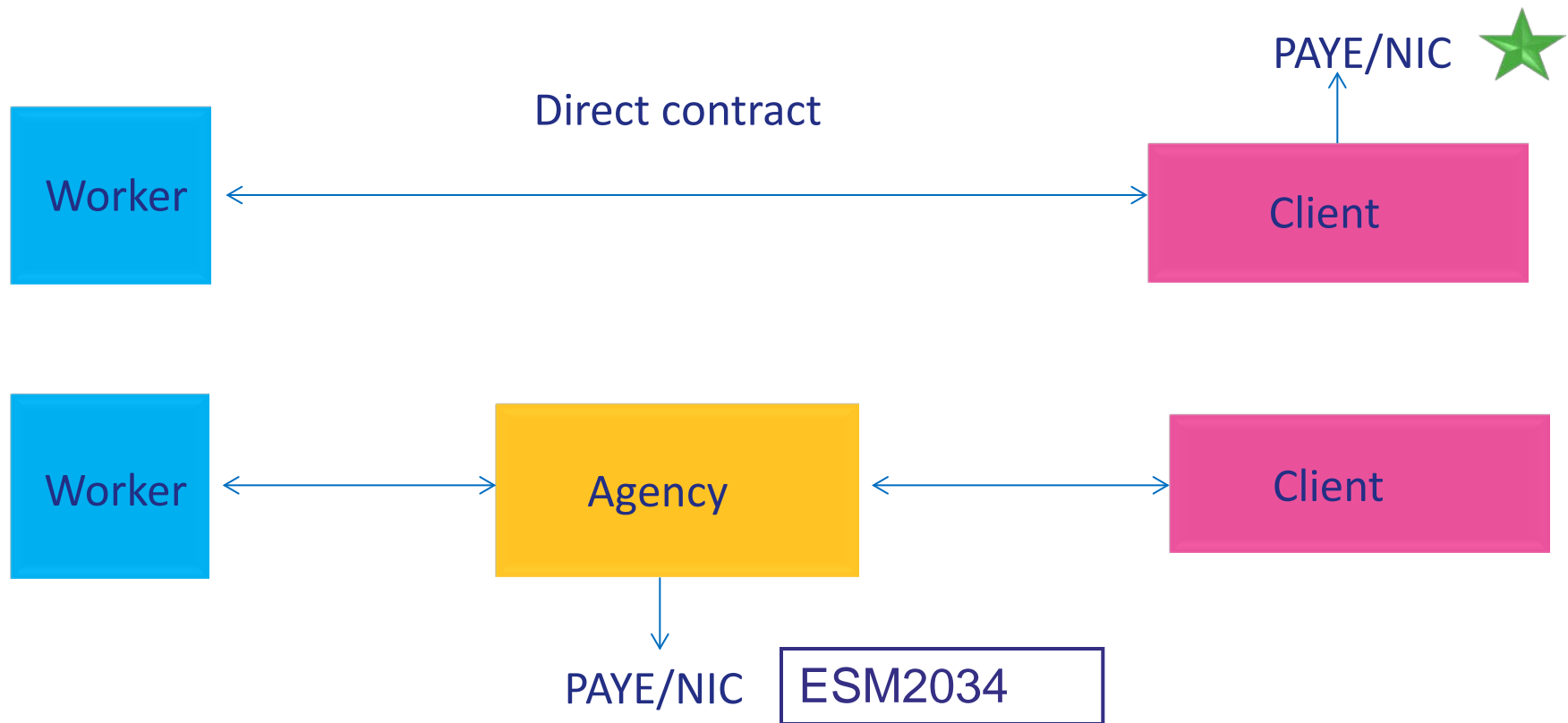
# The key players

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# Where there is no intermediary



★ But only where there is an employment relationship – Try the ESI?

# What do we mean by “an intermediary”?

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**Intermediary**

Most commonly a limited company  
(aka a personal service company  
(PSC));

But can also be:

A partnership; or even

An individual.

# Personal Service Companies (PSCs)

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- Note that although IR35 “taints” the use of PSCs, the Government has no fundamental problem with taxpayers forming and using PSCs;
- They are widely used and the Government seems to accept the tax fault line between the use of limited companies and unincorporated business structures;
- So, it’s only when they fall within the IR35 arena, do they potentially cause trouble.

# Before considering IR35.....

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- Before working out if IR35 applies to a contract between an intermediary and a client, you must first consider **the agency legislation** and **the Managed Service Company (MSC) legislation**;
- **Both of these take precedence over IR35;**
- If either applies, a taxpayer must ensure legal compliance with these pieces of legislation rather than IR35;

# Agency legislation

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- If a worker is employed via an agency, then this will may have potential PAYE and NIC implications for the agency;
- ESM2034 - Agency and temporary workers: agency legislation - provisions from 6 April 2014;
- If the agency is based outside the UK the client may be liable to operate PAYE and make the appropriate deductions, returns and payments of tax and NICs instead;
- There is guidance on HMRC's website.

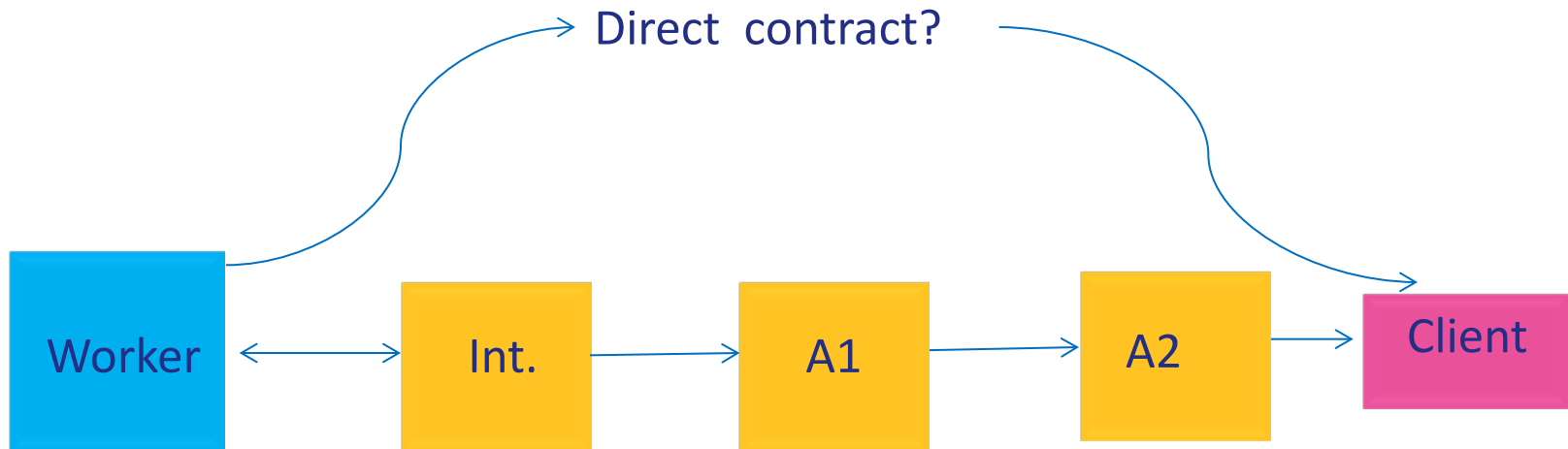
# IR35 case study – caught or not?

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- The worker (W) has an Intermediary (Int) and gets work through an agency (A1);
- A1 talks to A2 who has the contact with the final client (C), A2 offers work through A1.
- Each leg is governed by a contract;
- Each contract contains clauses covering substitution, control, mutuality etc.

# So, pictorially.....

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# The facts – (continued)

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- The substitution clause: there was a theoretical right for Int to provide a substitute;
- It had never been used in practice;
- W, was a highly skilled operative, but the direction of the contract was governed by C;
- The hours were set and timesheets submitted;
- W received some training from C as well as other sources;



# IR35 case study

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- Using the BETS (in your packs), try and determine whether he would be caught or not;
- Test scores and risk bands:
  - Less than 10 High risk;
  - 10 to 20 Medium risk;
  - More than 20 Low risk.
- What other realistic actions could he take to improve his chances of escaping IR35?

## 2 Partnerships in 2014

# LLP and salaried members

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- Effective from 6 April 2014;
- Members may have to be treated as employees and brought onto payroll;
  - tax issue, not legally employees;
  - But only if ALL three of the new rules are met;
- N/A to “ordinary” partnerships, but note changes to “mixed partnerships” from the Autumn Statement 2013.

# LLPs in 2014 – the basic logic revisited

- Remember you need to reel in ALL three fish to catch the worker as an employed member
- If only one fish escapes, the member is self-employed
- The fish are:
  - Fixed salaries
  - Lack of influence
  - Lack of sufficient capital contribution.

# LLPs and salaried members

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- Condition A - disguised salary remuneration
  - it is reasonable to expect amounts payable by LLP are directly linked to performance of services for LLP
  - which 80% or more made up of disguised salary
  - Disguised salary is
    - (a) fixed
    - (b) if variable not directly linked to profits/losses of LLP or
    - (c) where in practice not affected by overall p/l of LLP

# Quick example – from HMRC

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A is a member of the ABC LLP. Part of his reward package is that he is allowed drawings of £10,000 a month;

Under the terms of the agreement he does not have to refund this, even if the LLP makes a loss.

A is treated as receiving disguised salary of £120,000, as he will receive this irrespective of the profit or loss.

# But.....

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B is also a member of the ABC LLP. B can draw £10,000 but this is only an advance on his profit share. If the profit, after payment of non-refundable drawings of other member, is insufficient he will need to repay the money to the LLP.

If his share of profit is more than £10,000 he will be entitled to a further payment.

B's drawings are not disguised salary. The timing of payments is not relevant to Condition A.

# Condition B - influence

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- Condition B – Influence
  - the individual does not have significant influence over the affairs of the LLP
    - not enough to be on management committee
    - must be over whole business not just part



# Case study- sufficient influence?

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The Family Farm LLP has as members, a couple, Fred & Wilma and their adult son Barney.

There is an LLP Agreement, but it has not been amended since before Barney was admitted to partnership. It only refers to Fred and Wilma;

The way that the LLP operates in practice is that Fred, Wilma and Barney all have their say in the running of the business with Fred having a casting vote.

Is this family LLP caught by the new 2014 rules – will Barney be a salaried member and be put through PAYE and NIC?

# Case study – sufficient influence?

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Although the written agreement was not amended when Barney was admitted, the implied terms of the agreement under which Barney was admitted was that he would have a significant say in the business.

As a result, Condition B is not satisfied and Barney is not a salaried member.

# Condition C - Capital contribution

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- Condition C
  - Member's contribution to LLP is <25% of the projected profit entitlement for the year
    - fixed profit share plus bonuses and other profit allocations
    - does not include future potential payments, current account, tax reserve account
  - If make firm commitment to contribute within 3m of 6 April 2014 will be OK
  - new members must provide capital < 2m of becoming member

# Quick example from HMRC

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P has:

£10,000 contributed as capital in accordance with the LLP Agreement;

£50,000 as a long term loan. Interest is paid on the loan but otherwise the amount is held on terms comparable to the capital e.g. the loan is only repayable when P resigns, or the LLP is wound up.;

£30,000 as a short term loan for 2 years;

£25,000 undrawn profits – that can be withdrawn at any time; and

£25,000 in a tax reserve current account to pay tax on P's profit share.

# HMRC example

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P is entitled to withdraw the short term loan, undrawn profits and the sum in the tax reserve account whilst he remains a member.

P cannot withdraw either the sum described as capital or that described as a loan. They are both intended for the long term financing of the firm.

P has capital of £60,000.

# Capital contribution

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- Each change in capital will required new 'test'
- Legislation covers increases etc part way through year
  - must be reasonable to expect it will not be withdrawn
  - pro-rata'd for period of contributions

# Impact of changes if the new rules bite

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- Salary will be deductible for partnership;
- Individuals need to be brought into payroll;
- P11D;
- Individuals – closing year rules for LLP profits with cessation at 5 April 2014
  - potentially large final payment;
- Class 1 cost;
- Cash flow impact for business and individual.

# Quick question about mixed partnerships

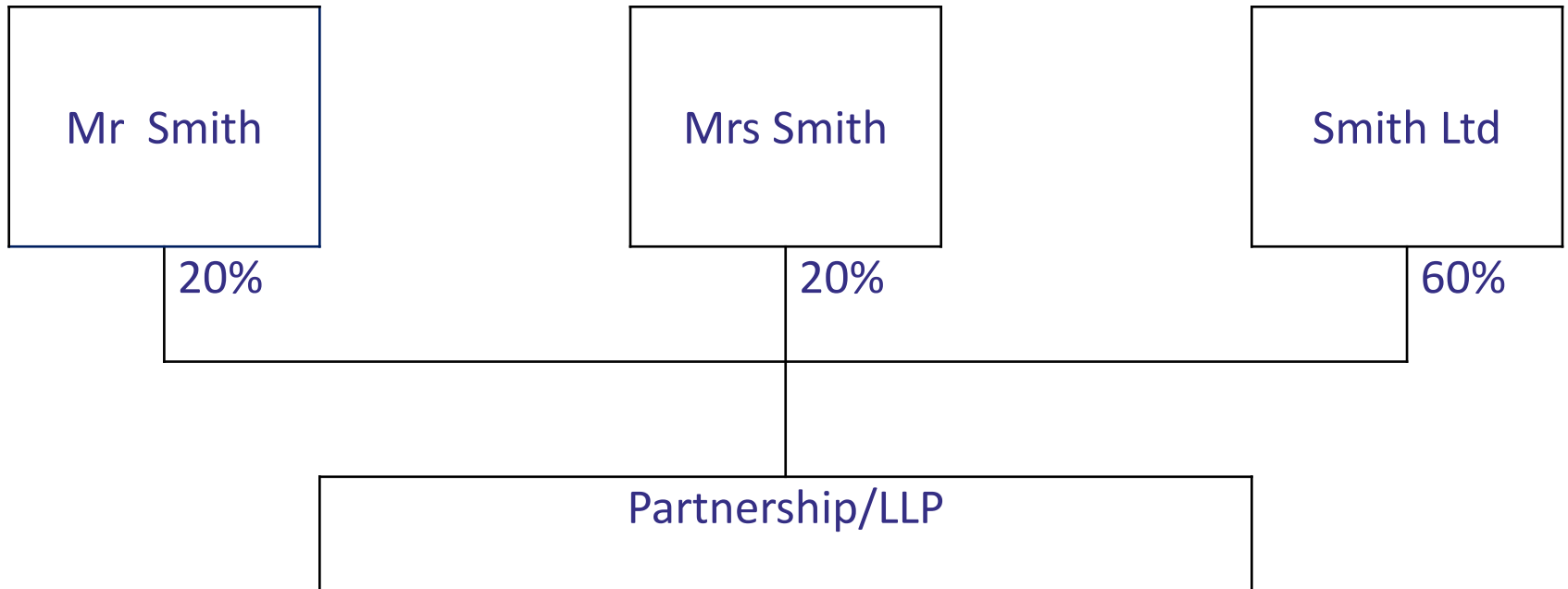
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- Mr and Mrs Smith have a partnership;
- It is earning profits of around £100,000 per annum.
- They want to know about a mixed partnership;
- Can they insert Smith Ltd into the partnership as a corporate member to divert profits into?



# Mixed partnerships

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# Changes to "mixed partnerships"

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- New Ss850C to 850E ITTOIA 2005
- Where profits of p'ship or LLP have been sheltered in a 'non-individual' member
  - company, trust or LLP (no benefit?)
- Or losses allocated to individuals in priority to non-individual members;
- Profits/losses will be reallocated

# Mixed partnerships - 2

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- Applies where
  - an individual member of a partnership – A – has been allocated a share of the profit or a zero result for an accounting period, and
  - there is a non individual member – B – of the partnership which has been allocated a share of the profit for the period, and
  - either Condition X or Condition Y is met

# Condition X

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A has some of their deferred profit share reallocated to B in such a way that there is a reduction in the overall tax charge.

Deferred profit is defined as any remuneration, benefits or returns relating to A that have been deferred, conditionally or otherwise.

The relevant tax amount is the total amount of tax that would otherwise be charged on A and B's income apart from this section.

# Condition Y

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- B's allocation of profit is in excess of the appropriate notional profit, and
- A has the **power to enjoy** B's profit share, and
- it is reasonable to suppose that the whole or part of B's profit share is attributable to A's power to enjoy, and both A's profit share and the relevant tax amount are lower than they would be had it not been for A's power to enjoy
- the result is a saving in tax

# Effect

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- If condition X or Y are satisfied the profits of the company are taxed on A, on the basis of the amount they have the 'power to enjoy'
- The non-individual member can be allocated a share of profits that cannot be reallocated. This is based on

A return on any capital employed – using commercial rate of interest. Based on long term capital – stays in until B leaves;  
This is likely to be small.

# Case study on partnerships

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- Your client is a builder who has 6 sub-contractors working for him;
- You do not think that they are properly self-employed as they do not work for anyone else;
- The LLP Act 2000, makes members of an LLP automatically self-employed;
- What would the builder have to do to get over the new 2014 rules?
- Are there any alternative structures?

## 3 Capital allowances



# The big picture

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- Plant v machinery
- Does it do something?
- (ie does it have a function, or is it merely part of the setting?)
- Beware the “fixed structure” problem.

# Quick question

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- A dairy farmer has spent £25,000 on a roof for his new slurry treatment plant – CA or not?

# Business tax case study - Russell

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- Russell is a sole trader and runs the village garage with his wife Angela and his son Toby.
- Angela works in the business and Toby does too, but they say he is self-employed;
- They have just spent over £100,000 on a new building for repairs and a new MOT testing station.
- Both Russell and Toby have undergone training to be MOT testers.

# Business tax case study - Russell

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- When you analyse the £100,000 spend, several items catch your eye:
- He has spent around £75,000 on the building and £25,000 on equipment.
- The building works includes:
  - £2,500 on electrical work;
  - £2,000 on thermal insulation;
- Within the £25,000, he has spent:
  - £15,000 on a new hoist and MOT equipment;
  - £3,000 on two big motor-driven roll doors.

# Russell - questions

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- What are the tax reliefs (if any) that he will be able to claim on his expenditure?
- Give your reasons.
- Quick VAT question:
- Will he be able to claim back the VAT on the MOT testing equipment, given that MOT tests are outside the scope of VAT?

# CAs for buildings

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- Note how the Capital Allowances Act 2001 deals with CAs:
- S21 – Buildings –List A assets treated a buildings;
- S22 – Structures, assets and works - List B excluded structures
- S23 – expenditure unaffected by SS21 and 22 - List C.

# List A – assets treated as buildings

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- 1 Walls, floors, ceilings, doors, gates, shutters, windows and stairs;
- 2 Mains services and systems, for water, electricity and gas;
- 3 Waste disposal systems;
- 4 Sewerage and drainage systems;
- 5 Shafts and other structures in which lifts, hoists; escalators, and moving walkways are installed;
- 6 Fire safety systems.

# List B – excluded structures

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- 1 A tunnel, bridge, viaduct, embankment or cutting;
- 2 Hard-standing, road, railway, car parks, runways;
- 3 Inland navigation;
- 4 A dam reservoir or barrage;
- 5 A dock, harbour pier, marina or jetty
- 6 A dike, seawall weir or drainage ditch;
- 7 Other fixed structures.



# List C - Expenditure unaffected by Lists A and B

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- Big list in S23 – includes:

- 1 Machinery;
- 4 Manufacturing or processing equipment;
- 7 Sound insulation;
- 9 Refrigeration and cooling equipment;
- 10 Fire alarm systems;
- 11 Burglar alarms;
- 13 Moveable partition walls;
- 15 Advertising hoardings.

Also says that the listings do not affect “integral fixtures” (S33A)

# Quick case study – the AIA

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- What is the maximum AIA for the following APs?
- Year ended 31 December 2013; and
- Year ending 31 December 2014?
- (Rates on next slide)

# The Annual Investment Allowance

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- 1/6 April 2008 to April 2010 £50,000
- 1/6 April 2010 to April 2012 £100,000
- 1/6 April 2012 to 31 December 2012 £25,000
- 1 January 2013 to 31 March 2014/5 April 2014 £250,000
- 1/6 April 2014 to 31 December 2015 £500,000
- 1 January 2016 onwards £25,000

# 4 Incorporation

# Incorporation case study

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- William has a successful VAT registered consultancy business. It was started in April 2007 and his profits over the last three years have averaged £60,000 per annum;
- He spends quite a bit on capital equipment.
- He wants to know about incorporation;
- What tax issues does he need to address?
- Cover: CGT, VAT and capital allowances.

# Incorporation case study

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- Suggested solutions given per the helpsheets;

## **Section B**

# **Remuneration strategies for employers and employees in OMBs**

# 1 Understanding and using salary sacrifice



# Salary sacrifice - the basics

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- A salary sacrifice arrangement is an agreement between an employer and an employee to change the terms of the employment contract to reduce the employee's entitlement to **cash pay**;
- Usually this sacrifice of cash entitlement is in return for some form of **non-cash benefit**;

# Statutory payments and salary sacrifice

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- Salary sacrifice affects Statutory Sick Pay (SSP), Statutory Maternity Pay (SMP), Ordinary Statutory Paternity Pay (OSPP), Additional Statutory Paternity Pay (ASPP) and Statutory Adoption Pay (SAP) in two ways:
- It can cause some employees to lose their entitlement altogether;
- It can affect the amount of statutory pay an employee receives.

# Entitlement to statutory payments and the NMW

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- To be entitled to receive SSP, SMP, OSPP, ASPP or SAP an employee's average weekly earnings must be at or above the Lower Earnings Level (LEL), which is £111 per week for the 2014-15 tax year;
- If a salary sacrifice arrangement reduces an employee's average weekly earnings below the LEL, then you won't be required to make any statutory payments to them;
- The salary sacrifice scheme can never reduce salary below the National Minimum Wage (£6.50 per hour for 21 and over from 1 October 2014).

# Salary sacrifice - the basics

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- Salary sacrifice arrangements are effective when the contractual right to cash remuneration has been reduced.
- For this to happen two conditions have to be met:
- The employment contract must be effectively varied **before** the changes are implemented. Any right to receive cash wages/salary must be given up before the employee is entitled to receive the remuneration;
- The true construction of the revised contractual arrangement between employer and employee must be that the employee is entitled to lower cash remuneration and a benefit (see EIM42766).

# Salary sacrifice - the basics

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- In some instances, salary sacrifice arrangements can be financially beneficial for both employer and employee.
- This is the case, for example, when part of an employee's remuneration shifts from cash (on which PAYE tax and NICs are due) to non-cash benefits that are wholly or partially exempt from tax and NICs.

# Salary sacrifice - the basics

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- It's important to weigh these potential financial benefits against other effects that salary sacrifice can have. For example, salary sacrifice in return for non-cash benefit increases the non-cash benefits an employer is required to provide to an employee if they take statutory maternity, ordinary paternity, additional paternity or adoption leave;
- It can also reduce an employee's entitlement to statutory payments for sickness, maternity, ordinary and additional paternity or adoption.

# Cash component v benefits component

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- An employer's key obligation is to make sure that it pays and deducts the right amount of tax and NICs for the mix of cash and benefits that you provide to your employee:
- For the cash component, that means operating the PAYE system correctly through your payroll;
- For any non-cash elements, it means checking the tax and NICs rules that apply and implementing them correctly;
- Reporting requirements for non-cash benefits –P9D or P11D?

# Asking HMRC to confirm the tax and NICs that apply

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- Once a salary sacrifice arrangement is in place, you can ask the HMRC Clearances Team to confirm its tax and NICs implications.
- Note that HMRC won't comment on a proposed salary sacrifice arrangement before it has been put in place.
- HMRC Clearances Team  
Alexander House  
21 Victoria Avenue  
Southend-on-Sea  
Essex SS99 1BD



## 2 OMBs – other issues

# OMBs – general issues

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- Fault line in the UK tax system makes companies more attractive than unincorporated structures in most cases
  - So general assumption here that we are talking about companies
- If starting with a sole trade or partnership, we need to consider incorporation issues such as:
  - Goodwill and amortisation for tax purposes (April 2002 rule)
  - Cars in company or not?
  - Property – hold outside or inside the company?

# Basic OMB remuneration strategies

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- No salary - just dividends
  - but no contributions record for benefits;
  - Maybe OK if a second business.
- Low NIC/PA salary and dividend stripping – especially up to the higher rate boundary;
- Reasonable salary and dividend top-ups.

# Basic OMB remuneration strategies - 2

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- Aspects to consider include:
  - PAYE and NIC issues – especially RTI
  - Pension contributions
    - if made by company instead of remuneration may reduce HICBC
  - Student loan repayments
  - Tax credits
  - Possible HMRC challenges?

# Employing family members

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- Fine if properly structured
  - and they actually do the work
- Good use of their personal allowances and BR band
- Spousal remuneration – is there a right salary?
- Spousal and other family dividends (Arctic Systems logic)?
  - important to consider rights attaching to shares
    - votes, dividend and net assets on winding-up

# The impact of recent case law

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- Are dividends still safe?
- PA Holdings Ltd – turning employees into shareholders
- HMRC challenge – PA ultimately lose
  - because ‘scheme’ was totally artificial
    - shares issued, dividend paid, shares cancelled
- But HMRC does not appear to be applying the case to the wider OMB population
- What about ‘alphabet shares’?

# Other dividend issues

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- Distributable profits – and proof of consideration
- Frequency of payments – monthly too frequent?
- Voting a dividend quarterly – could be to the DA, then drawdown
  - interim (directors) v final (shareholders)
- Killing the DA with a dividend;
- Right paperwork (see help sheets)

# Case study- Alphabet shares

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- Gerry and Frances started a small manufacturing business in the 1980s. Despite the ups and downs in the economy, it has quietly thrived.
- They have adult children, a son and a daughter, who are employed in the company and 5 employees.
- They want to make their children shareholders, but to be able to pay dividends to them differentially (Gerry and Frances are quite comfortable and the children have minor children of their own).
- Will this work?



# Putting your children through university

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- Are there any tricks?
- Employ them in the holidays?
  - must be reasonable salary for work done
  - NMW/ child protection issues
    - and the Slavery Act if <14?
- Give them a new low emissions car
  - taxed as second car for parent;
- Possible scholarship – unlikely to succeed unless part of larger scheme.

# S Kutcha v HMRC

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- Company paid scholarships to sons of main director/shareholder
  - took CT deduction
  - no tax for director;
- Scheme did fall within s212 ITEPA 2003
  - therefore treated as earnings of director
  - tax and Class 1 NIC applied.

# Putting your children through university

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- Even make them a shareholder?
  - issues if <18
  - also lose part of value of company as you won't get it back when they have finished;
- Also Companies House rules;
- What about living accommodation?

# Cars - general considerations

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- Tax v non-tax issues
  - Status of having a company car
  - Administration issues for employer
  - Company leasing may be less expensive
- Tax burden v convenience and cash flow
  - cost of extracting funds to buy own car;
- Better to start (and continue?) with the AMAP.

**3 Don't forget the exempt benefits!**

# Exempt benefits include.....

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- Pension contributions
- Liability insurance – relating to employment
- Travel home after working late
- Bicycles and safety equipment
  - no breakfasts any more
- Parking facilities at or near work
- Canteen meals – available to all employees
- Third party entertainment – not arranged by employer

# More exempt benefits

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- Security assets – threat caused by employment
- Sports and recreational activities – not open to public
- Redundancy and outplacement counselling
- Redundancy payments
- Phones (one per employee)
- Health care check-ups
- Some working from home payments

# Pension contributions

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- Very tax efficient for both the employer and the employee;
- Commonly made under salary sacrifice schemes;
- Changes to the Annual Allowance in 2014/15 (down to £40,000 from £50,000) and the Lifetime Allowance (down to £1.25 m from £1.5m)
- Major changes announced for April 2015 onwards;



# Quick case study - ABC

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- ABC Ltd owns a property which has just been sold at a considerable gain;
- The directors have approached you to ask about tax mitigation;
- Would it be possible to make payments into a personal SIPP to get tax relief?
- The two directors/shareholders pay themselves £10,000 pa salary on your advice from April 2014.

# I phones and blackberries

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- Phones or computers?
  - HMRC original view – computers (PDA)
    - Could still exempt under s.316
      - Private use insignificant
- R&C Brief 02/12 – mobile phones
  - Ignore in 2011/12 P11D if only one
  - Possible Class 1A refund 07/08 – 10/11
- N/a to laptops / tablets

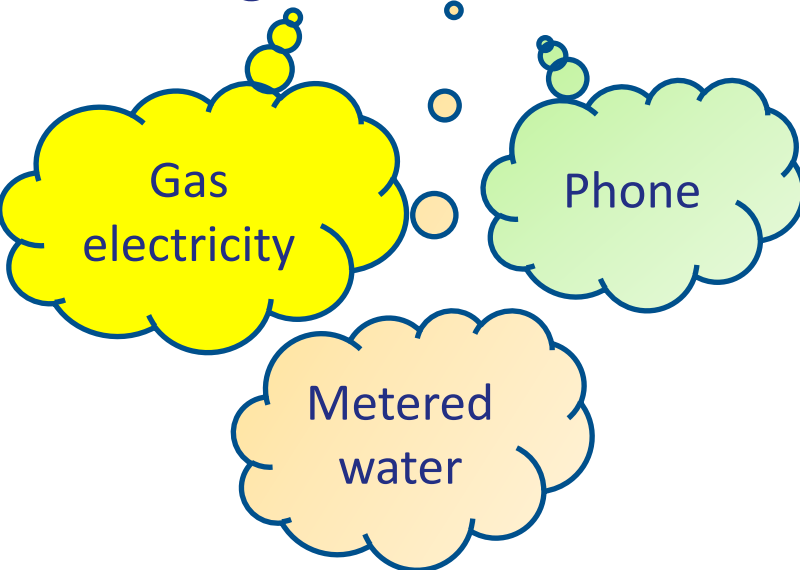


# Working from home

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## No choice

- Substantive duties
- No employer premises reasonably available
- Marginal costs allowable



## Choice

- s316A still available
- Reasonable employer contribution tax free
- £4pw from April 2012

# Medical check-ups

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- 2009/10 and later -allow one health check per employee per tax year
- No benefit on eye tests required by H&S legislation
  - nor glasses/contacts required as result of VDU work
  - if for general use allow element for VDU and tax remainder
  - if no special prescription for VDU use whole cost is taxable benefit
- No benefit on medical treatment arising from work related injury/disease



## 4 Childcare changes

# Employer supported child care

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- Workplace nurseries – exempt benefit;
- Employer contracts with provider or vouchers provided;
- Scheme must be open to all employees in same location
  - but can prioritise if over subscribed;
- HMRC allow exclusions if NMW issue;



# Employer supported child care

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- Employer contracts with provider or vouchers provided
  - 2010/11 – allowed £55 per week exempt benefit
  - 2011/12 and later - relief restricted to basic rate only
    - BR = £55 per week
    - HR = £28 per week
    - AR = £22 per week
  - 2013/14 - AR now 45%, so AR is £25 per week



# Childcare

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- Earnings assessment acceptable providing best estimate at time valid for year
  - even if incorrect
- Provide  $>$  max
  - direct contract with provider – P11D and Class 1A NIC
  - vouchers – P11D and Class 1 NIC
- Provide  $<$  max – no claim for employee



# Tax free childcare – Autumn 2015

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- Tax relief on childcare costs up to £10,000 (originally £6,000)
  - relief at 20%
  - for each child <12
  - relief via online childcare account
- The parent(s) must be working
  - not receiving tax credits or Universal credit;
  - minimum income level 8 hrs pw at NMW rate;
- Annual income limits: up to £150,000 for a single parent (300K if both work)
- Instead of child care vouchers
  - in addition to workplace nurseries

# What about the current scheme?

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- Employers will be able to continue to set up a childcare voucher scheme until tax-free childcare is launched, so good tax/NIC savings;
- Parents will be able to sign up for childcare vouchers until August 2015 and they can then continue to order vouchers beyond Autumn 2015, for as long as their employer continues to run the scheme (up to when the child reaches 15);
- Some existing scheme members will choose to switch to the new scheme from 2015, as in some cases this will provide higher savings.

# Will I be better off?

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- What is the impact on the child tax credit?
- Getting childcare vouchers potentially *reduces* your eligibility for tax credits;
- This is because the amount of tax credit you get depends on how much you pay IN CASH (ie, not vouchers) for childcare.

# Should you go for childcare vouchers or not?

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- If you're eligible for the child tax credit, then you're likely to be better off sticking with ONLY tax credits and not getting vouchers;
- There are a few circumstances in which you could still gain getting vouchers. For example, if your childcare costs are above £175 a week for one child or £300 for two or more children;
- If you can't claim tax credits, then you'll ALWAYS be better off using vouchers to pay for childcare.

# Section C Property taxation



# What's the best way of holding property?

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- Better in a company?
- CT rate 20% (from April 2015) v IT 20/40/45% - may depend on the number of properties;
- But double tax effect in a company;
- No CGT AE if held through company;

# Income tax issues

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- Core principles:
- Income from a UK property business
- Income from an overseas property business
- ITTOIA 2005.



# Income tax issues

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- Both of these “property boxes” are separate
- All profits and losses within the boxes must be aggregated
- Losses from one cannot be put against the other
- They can only be carried forward against future losses from the same “box”.



# A person's UK property business

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- Arising basis (ie accruals) – not cash;
- Deductions:
  - Wholly and exclusively and
  - Not capital
- Non-resident landlords' scheme

# Strategies for property

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1 Gifting property

2 Making the most of the PPR

3 Buy-to-let properties

4 Furnished holiday lets

5 Borrowing against equity

6 SDLT considerations.



# 1 Making gifts in a tax efficient way - CGT

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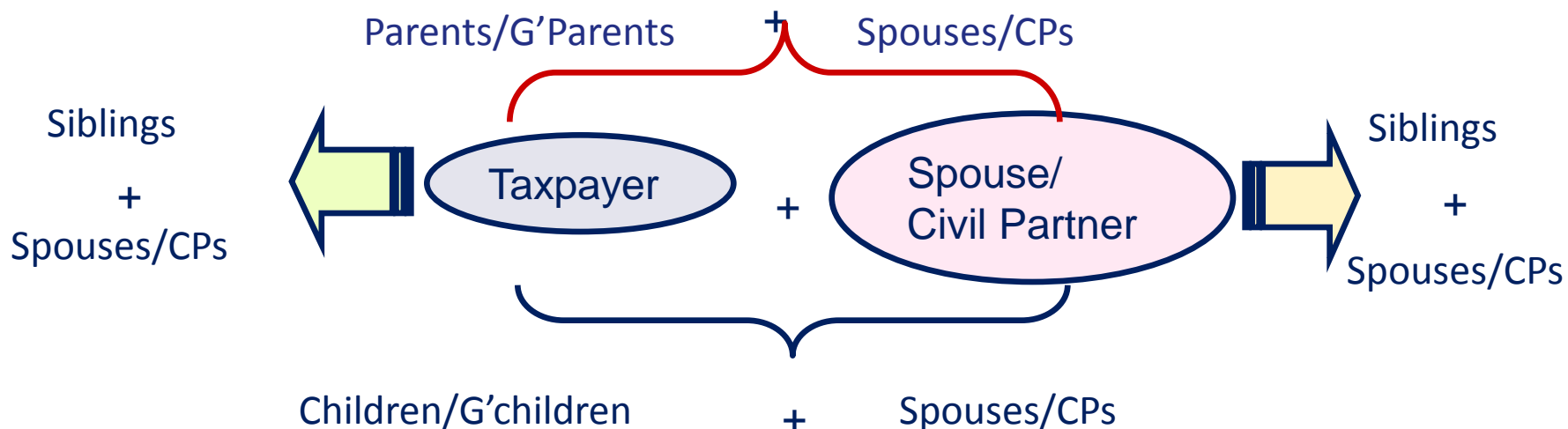
- Consider a gift to a family member:
  - Spousal gifts covered by both a CGT and an IHT exemption
- Gifts to family members not covered by such exemptions – so chargeable to CGT under the basic rules (ie connected persons)
- Holdover relief may be available if
  - business asset (s165 TCGA 1992) – FHL
  - asset transferred to trust (s260 TCGA 1992) any property

# Spousal/CP gifts

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- Remember, you can't split the income and the capital
- If say a property in one name is transferred from 100:0 to say 50:50, then both the income entitlement and the capital entitlement passes
- (Form 17 procedure)

# Connected persons



ALSO:

- Business partners + spouses
- Company = connected to persons controlling it

- Proceeds = MV
- 'Ring fence' losses

# What about the IHT angles?

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- An outright gift from an individual to another individual is a PET
- So no immediate IHT charge and none ever, if the donor survives 7 years from the gift
- If donor dies within 7 years, then tax liability falls on the donee of the gift
- Taper relief may be available (donor must have survived at least 3 years).

# Case study - Ghazanfar

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- Ghazanfar has a buy to let property which he bought some years ago for £50,000
- It has appreciated significantly in value over this period
- It is now worth £250,000 – there is no mortgage
- He would like to give it to his son who cannot afford to get a foot on the property ladder on his own
- What tax implications should Ghazanfar be aware of?

# Ghazanfar - suggested solution

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- If it's a direct gift:
  - CGT on the disposal to a connected person
    - treated as mv disposal
  - No SDLT providing donee does not take over mortgage
- IHT – this is a PET, so not immediately chargeable
  - gift may escape tax completely – will depend on whether Ghazanfar lived for 7 years and his available nil rate band if he dies < 7 years



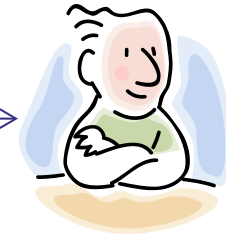
# Direct gift of the property – the CGT problem

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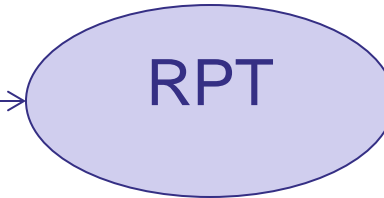
Asset cost £50,000  
mv £250,000

No gifts relief  
gain £200,000



cost to son  
£250,000

# Using a discretionary trust (aka RPT)



Asset cost £50,000  
mv £250,000

gain £200,000  
Holdover relief applies  
no CGT

Trustees

Asset cost £250,000  
less: HO gain £200,000  
= £50,000

Trustees gift to son  
Holdover relief applies  
no CGT

Cost to son  
£250,000 less gain HO  
£200,000  
= £50,000

This utilises S260, TCGA 1992



## 2 Making sure we've maximised the tax benefit of the PPR



# The PPR – quick review

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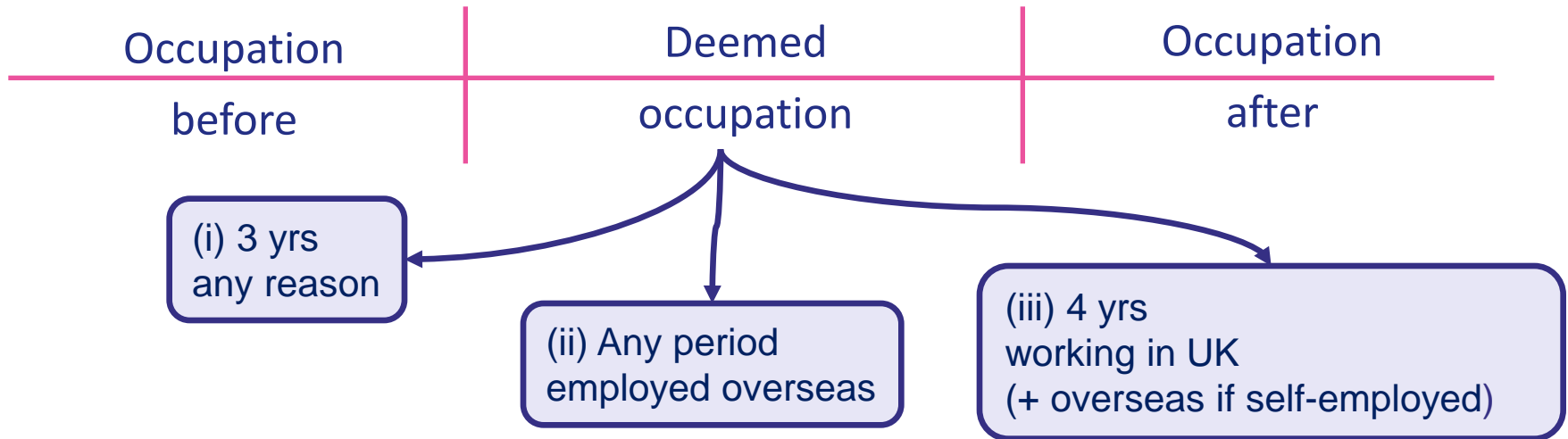
- Exempts principal or only residences from the CGT charge on sale
- Issues include:
  - Other buildings within the curtilage
  - Absences
  - Lettings relief
  - More than one residence
  - Buy to let properties
  - Selling off the garden for building
  - Leaving a PPR to children – IHT angles

# Don't forget the “deemed occupation” rules

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- If I live in a PPR for any (reasonable?) period then I can have the last 1.5 years free of CGT (from April 2014);
- It doesn't matter when the actual occupation is on the time-line of ownership;
- Qualitative rather than quantitative occupation;
- Also “intention to occupy” is important;
- There is also a second set of “deemed occupation” rules –see next slide:

# The deemed occupation rules - 2



No need for 'occupation after' for (ii) & (iii)  
if required by terms of employment to work away from home

# Don't forget Letting relief – a subsidiary relief – can be valuable!

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Letting exemption

s.223(4) TCGA 1992

Lowest of:

PPR relief

Gain in let period

£40,000 (max)



## PPR and letting example – pre 2014, three year rule

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Nick bought a property 10 years ago and lived in it for 1 year before letting it out. The property was sold giving a gain of £120,000.

	£
Gain	120,000
Less: exempt as PPR = $(1 + 3) \times 10$	<u>(48,000)</u>
	72,000
Letting exemption lower of:	
1 gain on owner occupied element = £48,000	
2 £40,000	
3 Gain on 'let' element = £72,000	<u>(40,000)</u>
Chargeable gain	<u>32,000</u>



# PPR and letting example - 18m exemption

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Assume the disposal is after April 2014

Gain	120,000
Less: exempt as PPR = $(1 + 1.5) \times 10$	<u>(30,000)</u>
	90,000

Letting exemption lower of:

1 gain on owner occupied element = £30,000

2 £40,000

3 Gain on 'let' element = £90,000	<u>(30,000)</u>
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Chargeable gain	<u>60,000</u>
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# Disabled persons

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- 3 year rules retained for disabled persons or in care home where:
  - 1 individual is disabled or long term resident in care home and does not have any other right in relation to a PPR
  - 2 individual's spouse or CP is disabled or in care home .....
- Also applies where trust owns property occupied by disabled person

# PPR election

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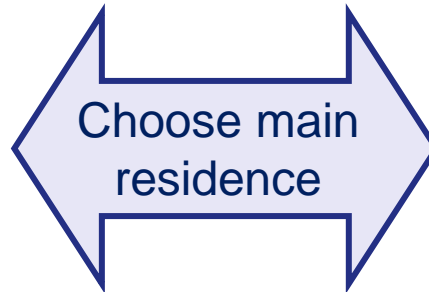
- Consultation on removing election to choose which property is PPR where own > 1 residence;
- Applicable from April 2015?
- Two possible approaches:
  - Proof of occupation;
  - Day-counting rule;
- Changes tied in with the proposed changes to the non-res CGT from April 2015.

# More than one residence

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House 1



House 2

Last 18 months exempt  
for **any** property that has been  
PPR at any time

Consider a bounce election

# Dr Amin Aghbal-Omidi (TC02841),(2013).

---

- Taxpayer (an experienced buy-to-let investor) purchased a property
- Got PP for a development and then sold it
- Said he'd lived in it for a short period
- Claimed PPR
- Denied by the court.

# Dr Amin Aghbal-Omidi (TC02841),(2013).

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- Factors taken into account by the FTT:
  - The loan on the property was taken out on the basis of the future development value;
  - Information provided did not provide actual evidence that Dr Omidi lived in the property -any evidence that was available pointed to the occupation being no more than temporary;
  - The property must have been marketed immediately after completion;
- Dr Omidi was an experienced buy to let investor, who was well aware of the significance of a successful claim to private residence relief.

# Dr Amin Aghbal-Omidi (TC02841),(2013).

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- HMRC referred to *Goodwin v Curtis (1998 STC 475) (CA)* which confirmed that residence denotes some degree of permanence, some degree of continuity or some expectation of continuity;
- Temporary occupation at an address does not amount to residence.

# Dr Amin Aghbal-Omidi (TC02841),(2013).

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- Note the keyword “intention” of the taxpayer when purchasing the property;
- Also, the FTT decision in *David Morgan v HMRC (2013 TC 02596)*, where the intention of the Appellant was the deciding factor rather than the quality of the occupation.



# David Morgan v HMRC (2013 TC 02596),

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- *David Morgan v HMRC [2013] TC 02596* a taxpayer was successful in a claim for PPR
- He lived at his property for a matter of weeks before deciding to let it out because his girlfriend had left him
- Finely balanced tribunal decision, but it shows that intention and the quality of occupation are both important.

# CGT and Non-residents

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- CGT chargeable where R in UK
  - location of asset not relevant
- 2015/16 and later – CGT will be payable where non-UK resident disposes of residential property situated in UK;
- Aimed at non-doms with UK property;
- UK resident individuals moving abroad permanently will need to sell within 18m to avoid charge (post April 2015);

# By the way.....

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- Spousal/CP backdating;
- Inter-spouse/CP transfers normally fall outside the scope of both CGT and IHT;
- The basic CGT rule is that a disposal for CGT purposes still occurs under an inter-spouse transfer, but rather than being made at MV, it takes place at a 'no gain/no loss' value (but only if the spouses are living together).

# Interspousal transfers

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- Where the spousal transfer is a PPR, then there is an extra angle to consider:
- The transferee spouse's period of ownership is deemed to commence not at the date of transfer but at the date of the original acquisition by the donor spouse;
- It is effectively backdated.

# Interspousal transfers

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- Conditions must be fulfilled in order for the ‘backdating’ to apply;
- It is important that **both** conditions apply as at the date of transfer:
  - 1 The spouses must be married and living together **and**
  - 2 The property in which the interest is being transferred must be ,or has been nominated as, the couples’ main PPR.



## 3 Buy-to-let properties



# Tax deductions for property

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- Property deduction rules generally follow the trading deduction rules
  - But no CAs for domestic properties (unless FHL – see below)
- OK in respect of P&M eg ladders, mowers, vans etc.
- Options are “renewals” (now very limited) or “wear and tear” – changes from April 2013 – ESC B47 now gone
  - renewals basis (very limited – tools, crockery etc);
  - NB no W&T allowance unless fully furnished property;

# Can I get a deduction for.....

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- Pre-letting expenses?
  - Generally not – this includes redecoration, new bathrooms, kitchens etc
- Follows the *Law Shipping* case
- BUT HMRC seem to be relaxed about properties that could have been let before work (using *Odeon Cinemas* logic).



# Landlords Energy Savings Allowance

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- LESA is a tax allowance that allows you to claim up to £1,500 per property against tax;
- UK and overseas properties;
- Individual or corporate landlords.



# LESA

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- You can claim LESA for what you have spent on:
  - Cavity wall and loft insulation;
  - Solid wall insulation;
  - Draught proofing and hot water system insulation;
  - Floor insulation.

# Rent a room relief

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- Valuable in certain circumstances;
- Pensioners living alone in big houses?
- Up to £4,250 per annum, from room(s) rented in own PPR;
- Does not cover buy-to-lets;
- Option to be taxed on actual receipts and expenses – could be more tax-efficient
  - or excess of rent >£4,250

# Spouse/life partner as a property manager

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- One way of getting some money to a spouse/life partner without giving them equity is to make them a property manager;
- They do some management in return for payment;
- Allowable for tax.

# Case study – Joyce's rental business

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- Joyce owns a number of commercial and residential properties which she rents out;
- This case study addresses the residential properties only.
- She has unfurnished, semi-furnished and completely furnished properties.

# Case study – Joyces' rental business

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- She has some queries for you:
- She takes deposits from her tenants against forward rent and possible damages and she wants to know how these are dealt with for tax.
- She has fridges and freezers in some of the properties and wants to know how the tax relief works if she replaces them;
- She is spending £20,000 on a kitchen upgrade – it will be a different design from the old one but is the same quality and finish;
- Is her travel to the properties allowable for tax?

# Repairs

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- For both trades and property rental businesses, repairs can be difficult for tax;
- One important question: is it a repair or is it the replacement of the whole?
- (a repair is good for tax and the replacement of the whole is often not good!)

# Example - Peter

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- Peter is a taxi driver;
- He keeps his taxi in a dilapidated garage;
- He wants to do something about the garage;
- If he knocks it down and replaces the whole – there is no tax relief – effectively nothing for buildings;
- If he patches it up – then the repair is allowable.
- It is irrelevant that the replacement is cheaper.



# Case study - repairs or replacement?

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- Peter is a dairy farmer;
- For many years, Peter has only carried out limited repairs to the drive from the road to his farmyard, but the dairy company has told him that the tankers cannot call anymore as the road is too bad;
- Peter has the drive repaired. The tarmac was removed and the sub-surface repaired. The drive was then re-surfaced and new kerbing added as necessary to bring the drive up to modern standards;
- Will he get the tax deduction for a repair or is it a replacement, with no tax relief?



## 4 Furnished Holiday lettings



# Furnished holiday lets

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- Lots of changes over the last few years;
- Principally the loss of sideways relief;
- Losses can only now be carried forward;
- UK and EEA properties only eligible – not outside;
- Useful HMRC Helpsheet 253.

# Advantages of furnished holiday lets

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- Plant and machinery allowances in the property – so no 10% W&T;
- Capital gains tax reliefs:
  - Rollover relief;
  - Gift relief;
  - Entrepreneurs' relief.
- But no IHT BPR relief;
- Counts as earnings for pension purposes.



# Furnished holiday lets (FHLs)

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- Changes from April 2012:
  - changing (upwards) letting days

Availability	140	→	210
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Actually let	70	→	105
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Note the stamping election – stamping two bad years with a good year.

# Losses in a FHL business

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- A loss in a UK FHL business can only be carried forward against a profit of the same UK FHL business.
- Likewise, a loss in an EEA FHL business can only be carried forward against the profits of the same FHL business. You can't set the losses of one FHL business against the profits of the other if you have a UK and an EEA business.
- Losses made on an individual FHL property may be set against the profits of other FHL profits in the same FHL business.
- However, losses of a FHL business can't be set against the profits of a non-FHL rental business.

# Furnished Holiday Lets – CGT aspects

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- Good background reading in HMRC Helpsheets:
- Helpsheet 253 – FHLs;
- Helpsheet 275 – Entrepreneurs' Relief.

# IHT Business Property Relief (BPR)

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- You can claim business relief on (inter alia):
- A business or an interest in a business (such as a partner in a partnership);
- Unquoted shares. This includes shares which are traded in the Unlisted Securities Market (USM shares) or the Alternative Investment Market (AIM shares);
- Land, buildings, plant or machinery owned by a partner or controlling shareholder and used wholly or mainly in the business of the partnership or company immediately before the transfer.



# Business Property Relief (BPR)

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- So, you can see from this that BPR is a useful first cousin to APR. It is normally available at 100%, but only 50% in some circumstances (S105, IHTA 1984) (notably in the last of the above scenarios). Incidentally, if both APR and BPR are in play over the same business, then APR takes priority.
- You only get BPR for trading businesses, not investment businesses, so care would be needed here to correctly identify the nature of the activities (Pawson case 2013)

# Borrowing against equity

# Borrowing against equity

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- Sue and John own a house that they live in
- As part of their pension planning, they are keen to get a buy to let and wonder if they can borrow against the equity that's grown in the house over the years
- Will it be tax deductible?
- Yes, because the source of the borrowing is irrelevant it's the application that's vital.

# Borrowing against equity in buy-to-lets (BTL)

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- Again the source doesn't matter;
- If BTL1 has grown in value, then it is possible to get tax relief to buy BTL2;
- But only up to the value of BTL1 when it first entered the letting market;
- It is possible to take equity out of a BTL for any purpose.

# Section D

## Inheritance tax

# 1 IHT and the family home

# General planning points

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- Review the wills;
- Any sophisticated planning will require that the property is held as tenants in common;
- Doesn't need to be held 50:50.
- If lifetime gifts are planned, think about the CGT aspects – try and preserve the PPR.

# Case study

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- Rez and Hazera are in their 70s. They have two grown up children and four grandchildren. Both are pensioners.
- They have a house worth £600,000 and cash reserves of £200,000;
- They have simple cross wills that leave everything to each other;
- They have asked you to consider the IHT aspects of their deaths and how any IHT liability could be mitigated;
- Assume Rez will die first.



# Other possible strategies

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- Gift and still occupy;
- GWR and possible POAT depending on the facts;
- Possible gift where both the donor and the donee subsequently live in the property – see next slide

# Gift and occupation route - example

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- When Jane's husband Bill dies, she sells her house for £400,000;
- She buys a new house of similar value and she moves in with her daughter and son-in-law (who have been unable to fund a house);
- She buys with her daughter as tenants in common;
- No GWR (S102B(4) FA1996 and no POAT (Para 11, Sch15, FA 2004).

# Other possible strategies

---

- Funding an extension:
- Grandma funds the building of a granny annex;
- No GWR as no interest in a property has passed;
- No POAT as the cash has NOT been used to acquire an interest in property;
- The cash gift is a PET.

## 2 Wills

# Why make a will?

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- The alternative is intestacy - Especially important if couple not married/CP
- Will gives certainty of disposition
  - But post death challenge may make lifetime gifting preferable if controversial distribution
- Easier to administer estate?
- What's the best will planning?
  - mix of lifetime gifts and legacies?
    - but difficult to know lifetime 'needs'
  - will assets be received in future allowing more to be gifted now
- Do we need to consider use of trusts?

# It's not just will planning

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- It's also about lifetime giving
- Get the balance right
- The earlier the lifetime gift, the more likely they will escape IHT
  - but lifetime gift may trigger CGT
- Clients sometimes don't like talking about IHT and death – it makes them feel uncomfortable

# IHT - Fundamental planning

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- Do not allow planning to over-ride financial security of donor or their family
- ‘Schemes’ can be expensive and are frequently blocked by HMRC
  - quite often retrospectively so cost of buying into scheme plus cost of getting out of it
- Do not overlook CGT aspects of plan
- Valid will – regularly reviewed?

# Need to review will?

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Death of  
relatives

Position of  
beneficiary

Death of  
beneficiary

Change in  
tax law

Birth of  
g'child

Beneficiary  
becomes  
bankrupt

Marriage/  
divorce



Illness reduces  
life expectancy



## 3 Lifetime giving for IHT

# Lifetime gift

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- Exempt
- Potentially exempt (PET)
- Chargeable lifetime transfer (CLT)
- Gift with reservation of benefit of use (GWROB)

# Exempt Transfers

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- Lifetime and death
  - Between spouses/civil partners
    - From 6 April 2013 £325,000 limit to non domiciled spouse (previously £55,000)
      - can elect to be UK domiciled for IHT from 6 April 2013
    - Charities and political parties
  - For national purposes or public benefit

# Lifetime exemptions

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- Regular expenditure out of income
  - Pattern of giving
  - Out of income
  - Normally in cash
  - Does not damage standard of living
    - eg life assurance, covenants
- Marriage gifts

# Lifetime exemptions

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- Small gifts
  - <£250 per person pa
- Annual exemption:
  - £3,000 per annum
  - Unused, carry forward 1 year
  - Applied FIFO against gifts
- strictly chronological even if PET before CLT.

# PETs

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- Gift by individual/trustees of an IIP Trust to
  - an individual or
  - trust for the disabled
- Gifts in lifetime to trusts no longer PETs – since 22 March 2006

# PETs (2)

---

- No immediate tax liability
- Liability if death within 7 years of gift
  - Nil rate band effective at death
  - Cumulative clock in 7 yrs to PET
  - Tax tapered if more than 3 years
  - Liability falls on donee
- Value frozen at date of PET
  - relief given for non-wasting assets if value falls by death.

# Chargeable Lifetime Transfers

---

- Before 22 March 2006
  - Gift to trustees of Discretionary Trust
- From 22 March 2006
  - Transfers in lifetime to any trust
- NB The term Relevant Property Trust = all trusts created in lifetime plus Discretionary Trust created on death.



# CLT's - 2

---

- Tax at lifetime rates when made
  - Nil rate band effective at time of gift
  - Cumulative clock in 7 years to gift
- Donor's liability at grossed-up rates
  - If donee pays tax on gross gift
- Recalculate liability if death within 7 years
  - Taper relief if more than 3 years
  - Credit for lifetime tax paid
    - No refund of lifetime tax

# Death Estate

---

- Assets and income accrued to death
  - Less:
- Liabilities and reasonable funeral costs
  - Plus:
- Overseas estate
  - Plus:
- Settled property subject to life interest

# Nil band and spouses

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- Deaths after 8 October 2007
  - unused nil band c/f to increase nil band for surviving spouse
  - unused amount expressed as % of nil band at first death
- no limit to date of earlier death
  - problems with ED
  - problems with documentation/proof
    - HMRC suggested docs list

# Example

---

Bob died on 1 August 2008 when the nil band was £312,000.

He leaves £10,000 to each of his 6 Grandchildren and the remainder to his wife Norma.

	£
Nil band August 2008	312,000
Utilised in estate	<u>60,000</u>
	<u>252,000</u>
$\frac{252,000}{312,000} = 80.77\%$	

Norma dies on 1 August 2014 when the nil band is £325,000. Her nil band becomes:

	£
Normal amount	325,000
Addition $80.77\% \times £325,000$	<u>262,503</u>
	<u>587,503</u>

# Unused nil band

---

- More than one spouse
  - max b/f = 100% of current nil band
- Used against tax arising on death –
  - failed PET's
  - additional tax on CLT's
  - estate at death
- HMRC allow b/f to be used before own nil band

# Charitable giving for IHT

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- Individual leave 10% or more of estate to charity
  - rate applicable to eligible component becomes 36%
  - based on net estate after reliefs, exemptions and available nil band
  - must be recognised charity
- Suggested wording available for ‘flexible will’

# Example

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Robert died on 17 June 2014 leaving an estate valued at £750,000 after the deduction of liabilities. He leaves £50,000 to the National Trust in his will.

	£
Estate at death	750,000
Less: exempt legacy	<u>( 50,000)</u>
	700,000
Available nil band	<u>(325,000)</u>
	<u>375,000</u>
 10% x (375,000 + 50,000) = £42,500	
Legacy to charity >10%	
∴ £375,000 x 36%	<u>135,000</u>

# Section E

## Value Added Tax



# 1 Input tax recovery issues

# Case study - input tax recovery on cars

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- Your client is about to start as a self-employed renewable energy consultant;
- He will work from home;
- He wants to buy a new car and wants to know if it is possible to reclaim the VAT on the car?
- What are the issues and are there any planning possibilities here (assume that he will be VAT registered from Day 1)?

# Case study - input tax recovery on cars

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- What difference would it make if he bought a dual-cab pick-up instead?
- Is the VAT on pool cars generally recoverable?
- Can a taxi driver recover VAT on the taxi, even if he drives it home each night?
- If his wife accompanies him on business, can his business recover the VAT on the travel and subsistence costs and hotel bills?

## 2 VAT and the internet

# Case study - VAT on internet selling

- Your UK client ( a limited company) sells computer accessories (goods) over the internet and sends them by post;
- These are sold to B2C customers in the UK, the EU and in third countries (ie outside the 28 Member States of the EU);
- The company has also produced an App which initial trials suggest will be a successful business venture;
- The App will be downloaded from a UK server and will be sold B2C all over the EU and in third countries;

# VAT on internet selling

- Questions:
- What is the VAT treatment of sales of the goods to B2C customers?
- What is the VAT treatment of the sales of the App to B2C customers?

## 3 VAT – property and construction issues

# VAT on construction

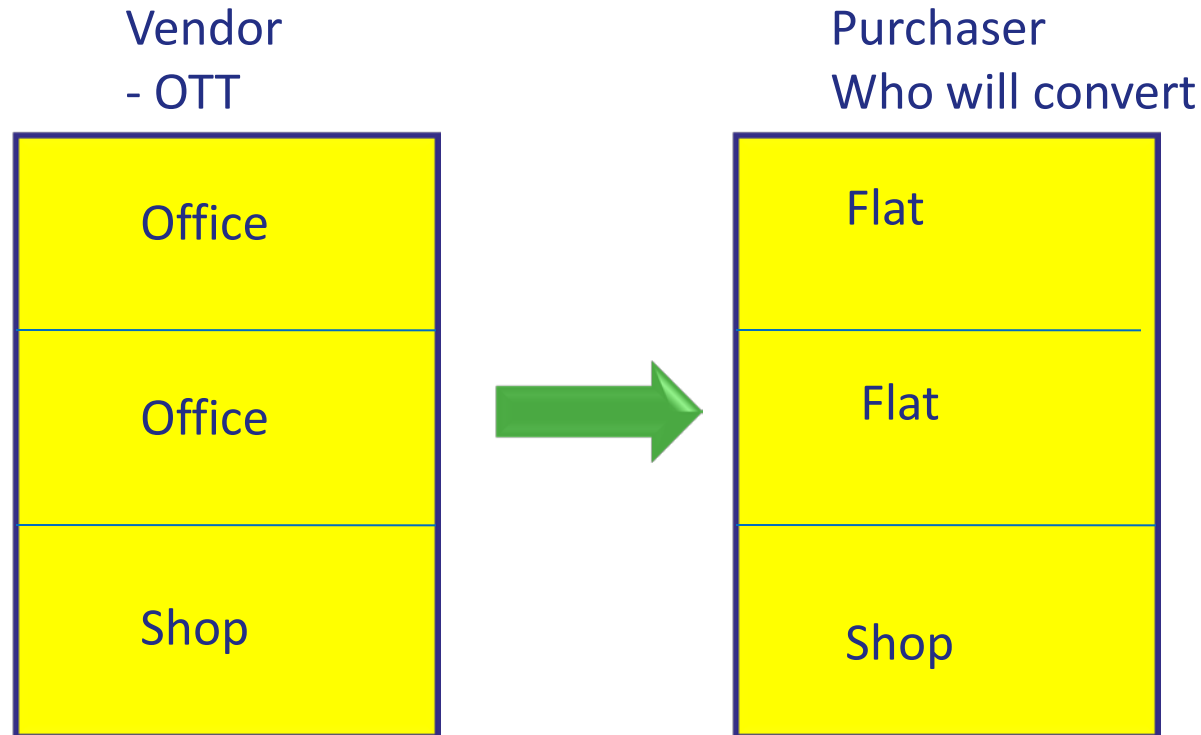
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- Well-known basic rule:
- Supplies in construction are standard-rated unless the valuable zero-rates are available, or the less valuable reduced rate is available;
- Construction projects can still cause problems;
- Two examples considered here:
- Conversion of a shop with offices above to a shop with flats above;
- Conversion of a pub to a dwelling or dwellings.



# Conversion of upper parts to flats

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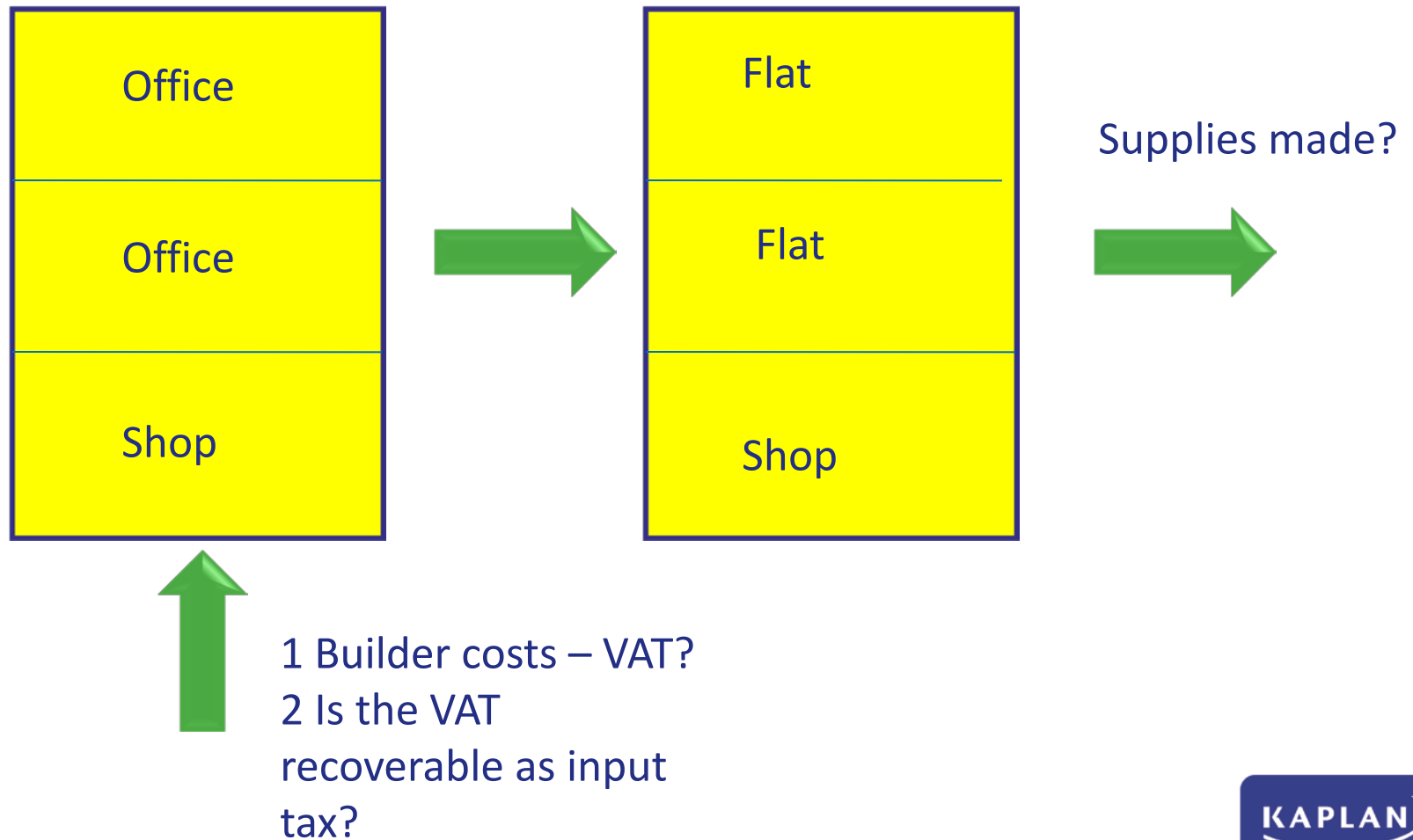
# Key points

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- Vendor has an OTT, so will need to charge VAT on sale under the basic rule;
- However, the OTT will be disapplied if there is an intention to convert to domestic dwellings (considered again later in this slide-deck);
- The purchaser will need to maximise his VAT position:

# Conversion of upper parts to flats

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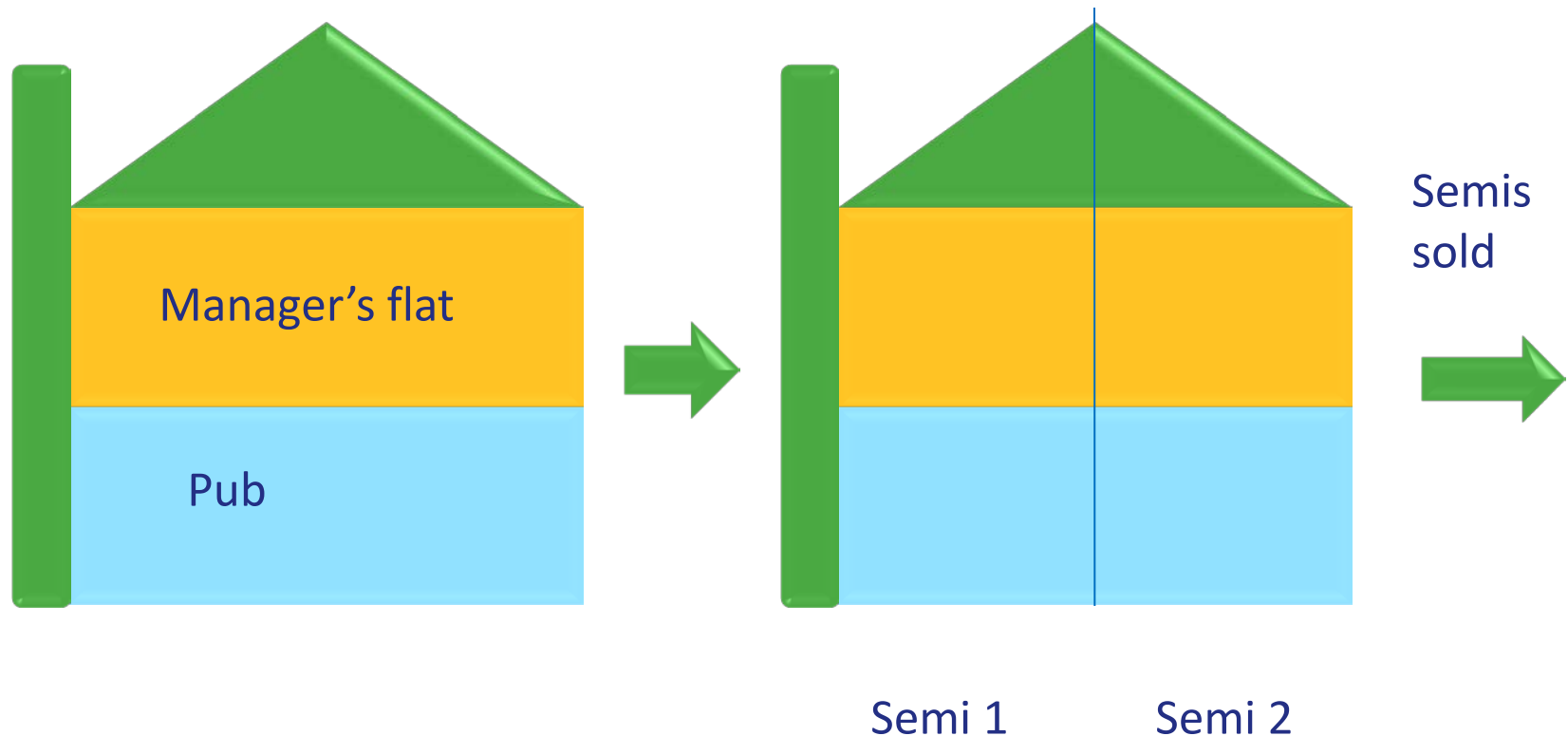
# Conversion of upper parts to flats

---

- Key VAT planning points include:
- If the purchaser wishes to keep the flats and rent them out, then these ASTs will be exempt supplies;
- So input tax recovery problems on builders' and material supplies;
- Lease and leaseback, or sale and sale back, will get the magic zero-rate – to justify recovery of input tax.

# Pub conversions – 2013 Tribunal case

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# Pub conversions

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- Key legislation and cases:
- Can the sale of the semis be zero-rated under Group 5, Schedule 8?
- That is, sale of a converted commercial building;
- Notes to the group and HMRC policy – no zero-rating if the new dwellings contain a part that was previously a dwelling (or part) – Calam Vale case;

# Pub conversions

---

- However, recent 2013 Tribunal case - **Alexandra Countryside Investments Ltd** says that the zero-rating is possible, notwithstanding the flat.
- Will HMRC appeal?
- Not yet known!

# VAT and property

- **Basic rule:** the grant of an interest in land is exempt;
- Leases v licences;
- Overrides to the basic rule:
- In statute;
- By choice.



# VAT and property – statutory overrides

- Examples include:
- SALES of new (or uncompleted) commercial buildings (note- NOT leases);
- Car parking;
- Hotel accommodation;
- Holiday accommodation.

# The Option to Tax

- Why opt?
- Simple - to recover input tax!
- What is the effect of an option to tax?



# The Option to Tax

- The effect of an option to tax:
- It binds the person who made it to add VAT to rents and the final sale;
- But note that it is turned off in some circumstances.
- Eg: domestic properties or parts.



# The disapplication of the OTT – recent case

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Ebley House Ltd TC 02816 (2013)



Purchaser

Opted  
commercial  
property

# Sales of opted properties

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- Basic rule – charge VAT;
- Over-ridden in some circumstances:
- Beware sales of opted property:
- Para 5, Schedule 10, VATA 1994
- An option to tax has no effect in relation to any grant in relation to a building or part of a building if the building or part of the building is designed or adapted, and is intended for use—
  - (a) as a dwelling or a number of dwellings;
  - (b) solely for a relevant residential purpose.

# "Intended" for use as a dwelling.....

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- The legislation does NOT make clear whose intention!
- Seller or purchaser?
- Presumably means the buyer, because they ultimately control the destiny of the building;
- In the Ebley House case, the vendor did NOT apply the OTT on sale because the purchase had informed him that the property would be used for a residential school for children with learning difficulties (this is a relevant residential purpose);

# "Intended" for use as...a dwelling

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- This lead HMRC to contest the treatment on sale when the purchaser changed his intention after the sale.
- The taxpayer won the case, but it reminds us that the two parties must have clarity about intention;
- The Public Notice has now been changed (at Para 3.4), that a certificate must given by the purchaser to the vendor.

# What does the new PN 742A say?

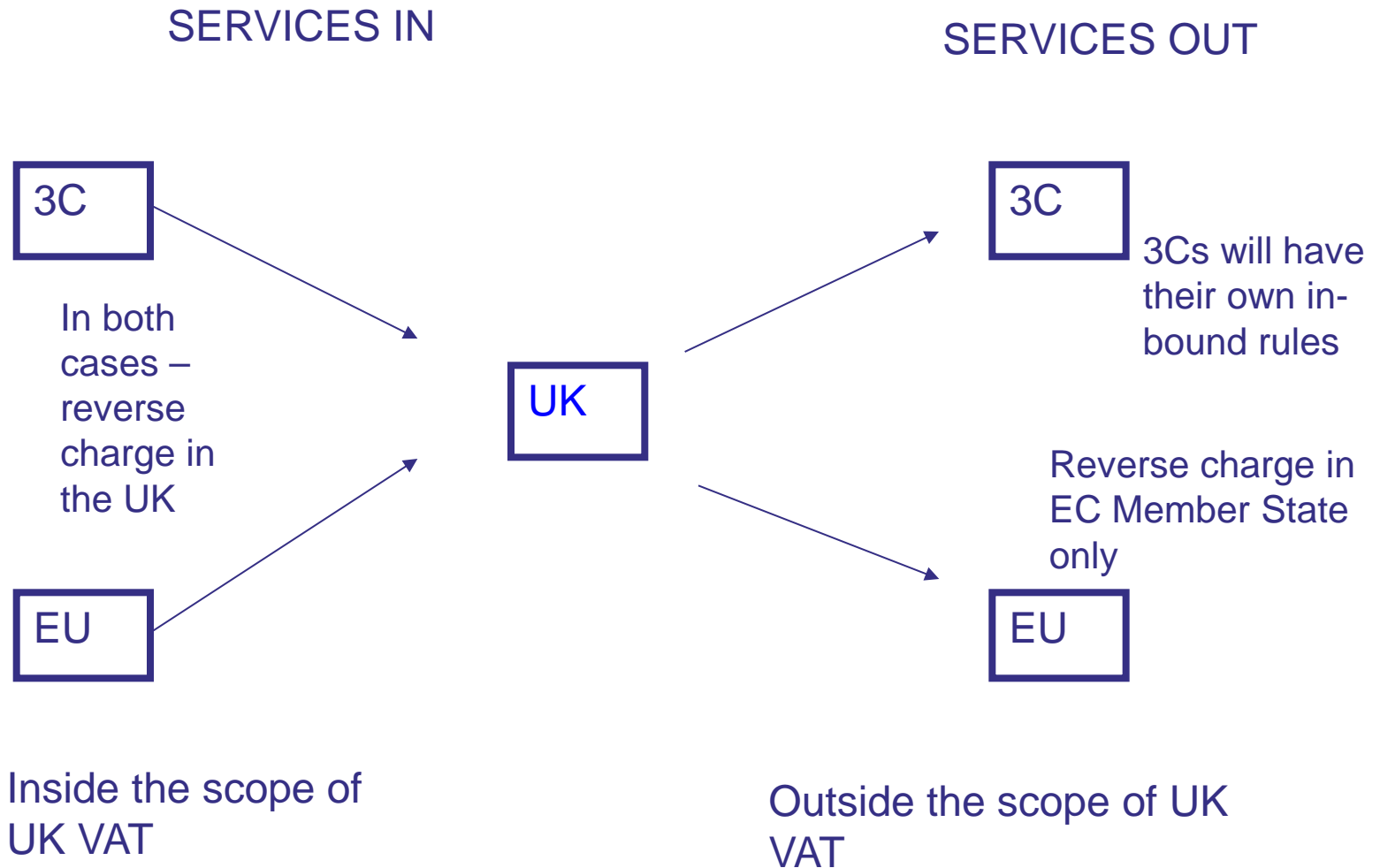
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- Your option to tax will not apply if you supply a building or part of a building that is **not** designed or adapted as a dwelling (or number of dwellings) or for a relevant residential purpose but you receive a certificate (VAT1614D) from the recipient of your supply (by the time described in paragraphs 3.4.3 and 3.4.4 below) certifying that it is intended for use as a dwelling or number of dwellings or solely for a relevant residential purpose. This can apply where the building, or relevant part, is either:
  - intended for such use without conversion work being undertaken, or
  - intended for such use after conversion.



## 4 More on services.....

# The reverse charge B2B



# B2C supplies

- The place of supply is where the supplier belongs;
- In effect, a default for services to consumers;
- Taxes consumption somewhere in the community;
- Special rules for B2C supplies outside the EC.

# Examples

- A UK accountant does due diligence for a Jersey company. The bill is sent to Jersey.
- This is a B2B supply and the place of supply (ie where VAT is brought to account) is Jersey;
- There is no VAT in Jersey, but they now have their own GST;
- We don't care – no VAT to worry about (the supply is outside the scope of UK VAT!)

# Example

- An accountant does the tax for an individual who has moved to Germany for a couple of years.
- This is a B2C supply and the accountant will have to charge UK VAT;
- The place of supply is the UK.

# Example

- An accountant does the UK tax for an individual who has moved to India.
- This is a B2C supply and the accountant would normally have to charge UK VAT;
- BUT
- The rule is modified – no VAT charged and is outside the scope of UK VAT (Para 16, Sch 4A, VATA 1994).

# Overrides for B2B rules

- As before, there are some overrides to the basic B2B rules;
- For example: land
- For land the POS is where the land is situated;
- Example: an architect in London is doing work designing a French building to be built in Paris –the POS is where the land is, so VAT will need to be brought to account in France.

# The land override

- This means that the UK architect will need to register in France (subject to the French VAT limit);
- Or;
- It may be possible to reverse charge the supply into the French customer's VAT number to save the unwanted French VAT registration.



# Performance services

- These include:
- Repair work, inspection work;
- Lecturing;
- Cultural, artistic, sporting scientific work, exhibitions etc.
- Since 1 January 2011 these are supplied under the normal B2B rules, so the POS is where the customer belongs (so a reverse charge for EU customers).

# BUT.....

- Overseas exhibitions can be tricky!
- Example:
  - A UK OMB goes to a trade fair in Germany to have a stall to show their wares;
  - The business will be invoiced from Germany for the stall and related services;
  - What is the VAT treatment of this?

# German Trade Fair

- The OMB is a business customer (B2B);
- Performance services such as exhibitions are supplied where the customer belongs (basic POS rule for B2B services) –so a reverse charge into the UK;
- BUT;
- The situation is made more complex by the **admission** rule to such events and the **ancillary services** rule to such events (Para 9A, Sch 4A, VATA 1994).

# German trade fair - continued

- So, if the supply was just **admission** to the event, it would have German VAT on as the POS of admission to an exhibition is where it takes place (Para 9A, Sch 4A, VATA 1994);
- (Ancillary services are where someone organises an event for someone else, so not relevant here!);
- So, it's important to work out what the supply is and not rely on how it's described!

# While we are there....

- Don't forget that the client is bound to incur some German VAT;
- Can this be reclaimed?
- Yes, under Directive 2008/9/EC (formerly the 8<sup>th</sup> Directive);
- Apply on-line through HMRC's website;
- Local German rules on recovery apply though (not UK rules).



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