

White paper

Self Assessment Online Surgery with AccountingWEB's Rebecca Benneyworth

Tax Filing Q&A Summary

Introduction

At Sage we understand how demanding the run up to the online filing deadline for Tax returns is, and how important a helping hand in those final few days can be. That's why our Sage Support team stayed open for the final weekend prior to the filing deadline – right up to midnight on Monday 31 January – to assist with your tax-related queries.

In addition to telephone support, and following on from the success of last year's Online Surgeries we teamed up with AccountingWEB again to open an exclusive, free Self Assessment Online Surgery – to offer live support in the crucial run-up.

Expert and well-respected tax author, Rebecca Bennyworth, was online between 24 and 31 January, to field all of your tax questions and post responses that we hope resolved issues for many of our customers.

In this white paper we have taken a selection of some of the questions posted on the online forum, including Rebecca's response. Have a read and we hope you might find some useful information for next time round.

Please note: The information and advice contained in this white paper were provided by Rebecca Bennyworth as part of the free AccountingWEB.co.uk Online Surgery service offered by Sage in January. We will keep you informed regarding any future surgeries.

Income from property

Hi Rebecca

Rental income from property - can this be transferred to spouse from husband if he owns property?

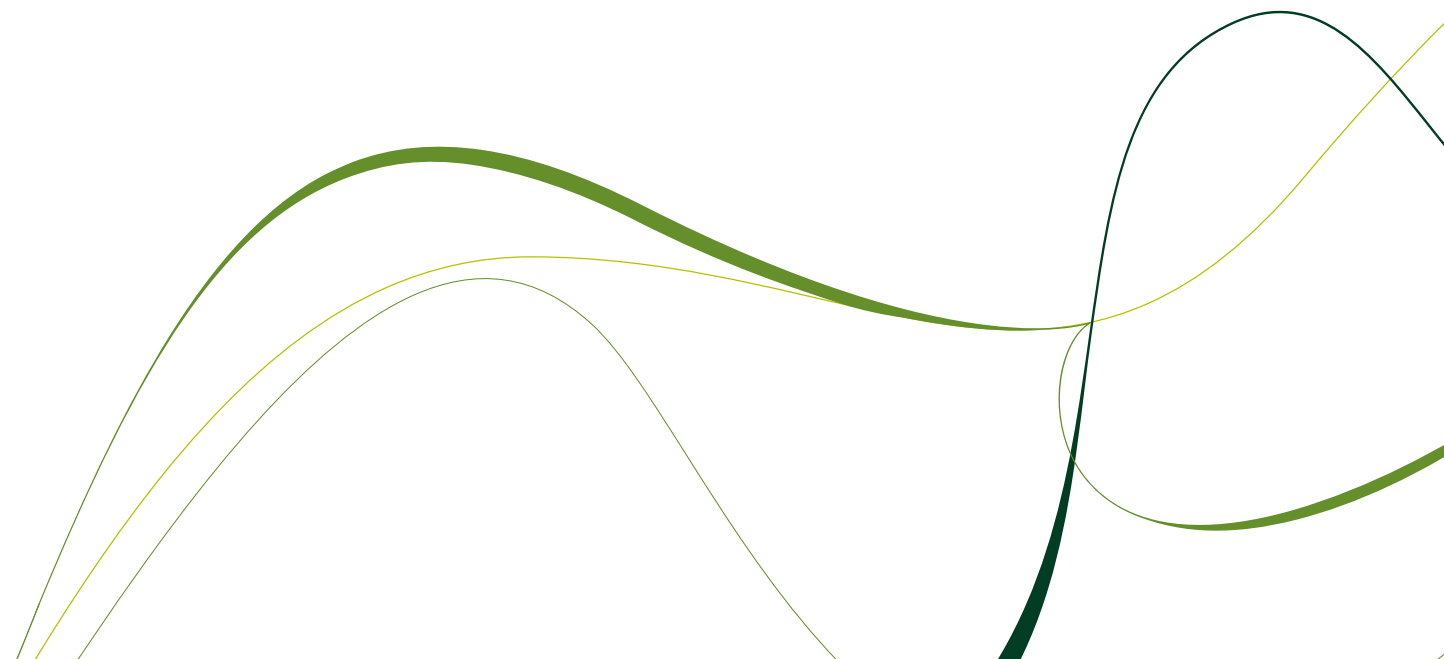
Thanks, Keith

Hi Keith,

The rental income for each property must be reported according to who owns the property. So if the property is wholly owned by the husband then he must report 100% of the income.

If the property is jointly owned then the law assumes that the income is 50/50 to the husband and wife (irrespective of their actual share in the property). If the couple wish they can elect for the income to be taxed according to their actual underlying ownership share but no other election is possible; this means the capital gain would follow the income share here. So in your situation you have the following options :

- Property owned 100% by one spouse - no election and report all income on that spouse.
- Property owned jointly - 50% as no election was made for the year. Can make an election for future years (not sure of time limit) but this MUST be in relation to underlying capital shares.
- Not married? Report income shares as allocated.



Property expenditure

Hi Rebecca,

Where does one draw the line on allowable repairs and renewals e.g. I have a client who has spent money in “doing” up her buy to let flat. Namely £1670 for work to the loft, insulation, flooring, lighting etc. Building a stud wall £1500 and fitting new bathroom and kitchen £8500. Are these allowable or is the cost allowed as capital expenditure when the time comes to sell the property?

Thanks Peter

Hi Peter,

You have a mix of expenditure here. First some of it qualifies for relief under the Landlords Energy Saving Allowances. A maximum of £1,500 per property is available on insulation. Have a look on HMRC’s website for more details but the loft insulation and installation of it will count.

The stud wall and much of the rest sounds like improvements which will be added to the capital cost and allowed for CGT when she sells it. Anything which improves the property or made it “lettable” when it wasn’t before is capital. You may be OK with the kitchen if it merely replaced an existing one, but I would be looking at mainly capital and repairs from here on in. Make sure you document the improvements well - I always keep copies of the invoices of things I have capitalised on a separate “Property cost” file, with a spreadsheet to back it up.

Things like carpet and curtains etc. can go on a replacement basis - that is the first time they are fitted you cannot claim then after that you can claim when you replace them. Wear and tear allowance should only be claimed if the property is fully furnished.

I hope that covers it all!

Partnership income

Hi Rebecca,

I have a non-dom client who has a 10% interest in a partnership in Ireland. Am I correct in assuming that his share of the profits will only be taxed if remitted to the UK irrespective of whether he chooses remittance basis or not? Also the same client has rental income in Ireland, am I correct in treating this on the arising basis irrespective of whether my client chooses the remittance basis. This appears to be what DT9856 is saying in the revenue double taxation treaty.

Thanks, Sam

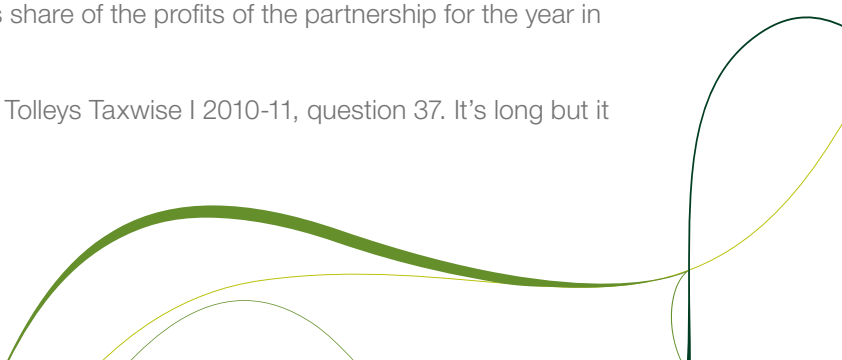
Hi Sam,

Here’s the deal. If the trade is carried on in the UK then the profits are taxable here even though it is a foreign partnership. If the trade is carried on in Ireland, then this is a foreign source. So the rules are:

1. Automatic remittance basis applies if the total unremitted income and gains for the year in question is below £2,000. Look at all foreign source income and gains as a total. Of course any remitted income would be taxed in the UK in any event. Check you understand the term “remitted” - this can include goods as well as just “cash”.
2. You can otherwise CLAIM the remittance basis if you wish. This will always result in the loss of UK personal allowances and capital gains tax exempt amount, so your unremitted income would need to be quite substantial for this to be of any benefit. And see 3 below for the nasty upshot.
3. If your client has been UK resident for at least 7 of the preceding 9 tax years then he will have to pay the remittance basis charge of £30,000 in order to claim the remittance basis. Obviously the unremitted income and gains would need to be very substantial indeed in order for this to be worthwhile.

If 1 doesn’t apply and you don’t claim the remittance basis then your client is taxed on the ARISING basis automatically, which means that he is taxable on his share of the profits of the partnership for the year in question.

There is a good question on the remittance basis in Tolleys Taxwise I 2010-11, question 37. It’s long but it covers every possible scenario.



Employment expenses

Hi Rebecca ,

I'm doing a Tax Return for a Personal Trainer and they insist that they can claim for food and protein drinks at approximately £1500. He says that 'his boss' (also a Personal Trainer) claims these! I can't see that it makes any difference what you do for a living - I've never known anyone being able to claim for lunch! He also wants to claim £300 for haircuts saying he needs to look smart for his job! Help please!

Thanks, Sandra

Hi Sandra,

Food and protein drinks £1,500 - no chance. They are not "wholly and exclusively" or even nearly. The only way I would accept a claim is if he is eating while away from base - maybe he is training someone for "Strictly" and is away from his normal area...then with travel I would allow a small amount of subsistence; otherwise forget it. And don't listen to any old rubbish about "needing protein drinks". That's not for the purpose of the trade, it's for the purpose of his (her) body. Doesn't do it for me.

Haircuts £300 - needs to look smart; So do lots of people. Not business related - not "wholly and exclusively".

I acted for a keep fit instructor once. I found the arguments over trainers more challenging - especially as hers lasted about 3 months and she needed 3 pairs (to change during the day) and lycra wear - which probably doesn't meet the test either, but I would be a bit more understanding on that type of stuff - she needed a change for each session - sometimes 6 a day. Also claimed shower gel within reason (showers between classes).

Wear and tear allowance

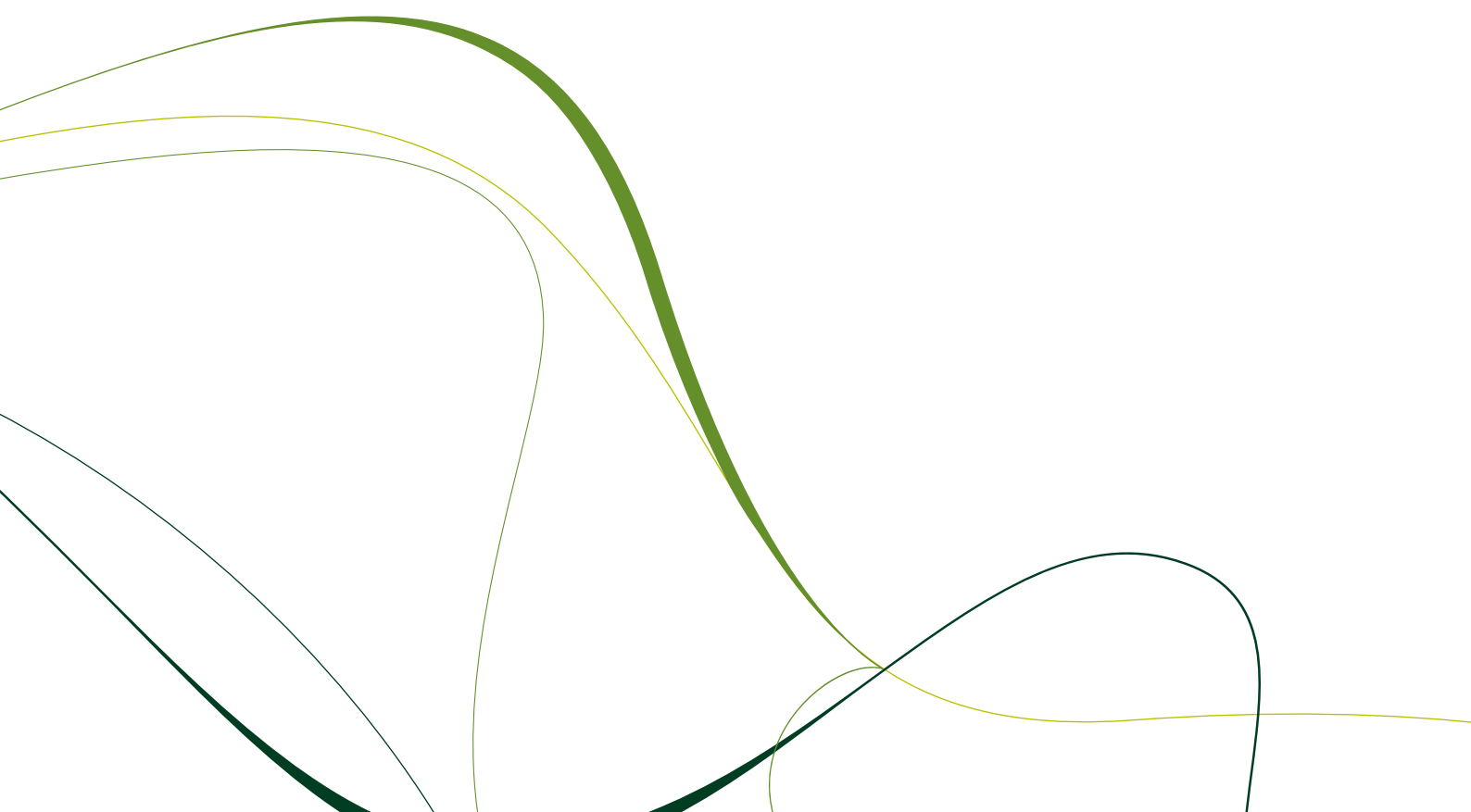
Hi Rebecca,

Addressing the "wear and tear" allowance. Can this be claimed IN ADDITION to specific repairs i.e. if I claim for a boiler repair, replacement carpets etc., the wear and tear can be claimed on top of these?

Thanks, Peter

Hi Peter,

Wear and Tear allowance covers all furnishings and furniture so carpets would be covered by that and you couldn't claim to replace them. However a boiler repair or replacement is not covered by wear and tear allowance as it is physically part of the property so you could claim for that.



Partnership profits

Hi Rebecca,

I'm concerned about a partnership where the profits have been split 50/50, but the drawings have been about 80/20. Result, 1 partner's account overdrawn. Does HMRC care? And can they vary the profit-sharing ratio to minimise tax (e.g. to use up each partner's PA)? Low profits, no HR tax involved here. Partners not spouses. I found several discussions on Accounting Web, and there were more opinions than contributors!

Thanks, TC

Hi TC,

It is up to the partners how they share the profits in the business - that is a commercial decision. If there is a partnership agreement (not that common with small partnerships, but possible) then it will often state the shares and also provide for them to be varied. While unrelated partners may vary their profit sharing arrangements for the best overall tax result this suggests to me that they are not independent of each other, and therefore you may have an issue with the settlements legislation.

The key to a settlements issue is if the income transferred to partner A by partner B is ultimately available to partner B to spend. If the entitlement to income goes irrevocably to partner A and partner B cannot treat it as "my half of the mortgage" you would be on safer ground.

I certainly think you are right to be worried about varying the profit sharing ratio to get the right tax answer when the parties are not married - you have two concerns; first the tax issue and second whether this would prove to be poor advice taken in the round if the couple (I'm assuming) split up.

As far as the overdrawn current account is concerned, the main problem is if there is also a bank overdraft or other borrowings for which the partnership seeks interest relief. That may cause a problem for you. Sound like they need sitting down and talking to about their profit shares and their drawings to get things on a more business like footing.

Capital gains

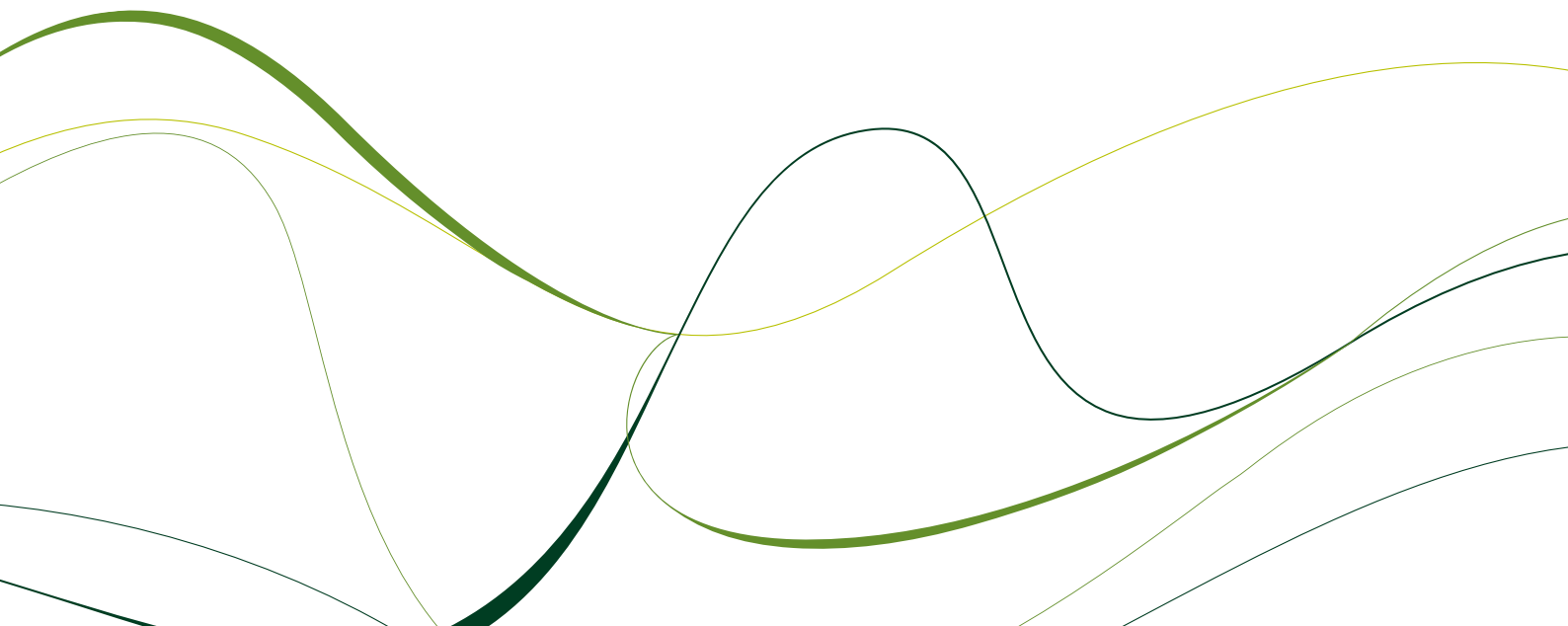
Hi Rebecca,

I have a question on the capital gains tax on sale of a property. My client is letting out her apartment in London since Apr 2010. She lives in another town and renting a property so the London apartment is her only place that she pays mortgage on. What is the rule on CGT i.e. is there a time limit where CGT wouldn't be applicable if apartment was rented out for a certain period of time? Would she have to go back and live in it for a period to avoid CGT when the property is sold? Many thanks.

Thanks, Peter

Hi Peter,

She can only claim exemption if she has actually lived there as her only residence. I guess she lived there when she bought it? So then she is exempt from CGT for the last 3 years of ownership. Beyond that she can claim letting exemption too - a maximum of £40,000 or the gain attributable to occupation if lower. Hope that helps



Foreign gains

Hi Rebecca,

Please could you advise me on the following scenario: I have client who is Resident in the UK but Non domiciled. He made a foreign capital gain of £3,941,490 from selling shares. Entrepreneur relief is available. During 2008/09 he only remitted £100,000. In 2009/10 he remitted the remaining. How do I show the above in this 2008/09 and 2009/10 tax returns.

Thanks, Jag

Hi Jag,

I am assuming that your client has elected for the remittance basis for both years? You need to be sure that this is sensible, because if he remits it all then it may not be worth it. I'll run through quickly :

1. Arising basis - no loss of personal allowances and CGT exempt amount; No payment of Remittance Basis charge (£30,000) if relevant. Put gain on tax return in the year arising. Limit of ER is the year in which gain arose. You haven't said which year the gain was in but I assume 2008/09.
2. Remittance basis - if claimed in 2008/09 you will lose personal allowances and if resident for 7 of last 9 years also need to pay £30,000 remittance basis charge. This would obviously be a waste of money if you remit the gain the following year as it will be taxed anyway on a remittance basis.

If doing the remittance basis you declare the gains on the tax return as remitted and not as they arise, so £100,000 in one year, the balance in the next.

You might find HMRC's guide HMRC6 useful reading. There's also quite a bit in the notes to the non-residents pages for the tax return - have a look in your "bible".

House sale

Hi Rebecca,

Mrs A buys her house in August 1999 for £130K. In Aug 2004 her new partner Mr H lives with her. In March 2005 they move out and the property is let. In April Mrs A transfers the property (now valued at £280k) into joint names (in anticipation of marriage and the purchase of their new home). In July 2009 the let property is sold for £216K. Presumably PPR period is extendable by 3 years. But does the exemption for letting as residential accommodation apply only to her. And does value at the time of transfer into joint names have any effect on the calculation?

Thanks, Chris Edwards

Hi Chris,

Let's take it step by step. First disposal is 50% share in April 2005. She is covered by PPR and one month of "last 36 months" for this half. No gain taxable.

Second disposal her 50% share in July 2009. She has last 36 months on this half and also letting relief (max £40,000). No gain taxable.

Husband or partner - acquires half share in April 2005 of a property in which he does not live at the time he takes ownership. No PPR. I guess he acquires at MV as they are probably regarded as connected in view of forthcoming marriage. He has no exemptions at all - but in fact the view might be that he has an allowable loss. (Can't do no gain no loss transfer if they were not married) So I think he declares a loss and she a profit (using original cost x 50%) but with relief.

Sale of land

Hi Rebecca,

My client has made a part-disposal of land, and on current market values the part-disposal fraction gives a high proportion of the original cost to be allocated. As this is not required, can I justify a different cost allocation because value was added when planning permission obtained? This is realistic for commercial reasons.

Thanks, Fran

Hi Fran,

ESC D1 allows the apportionment to be carried out on any fair and reasonable basis, which for land is usually based on area sold compared to total area. I don't think you will have any problem with this.

Pension contributions

Hi Rebecca,

I have a query on the anti-forestalling rules - first of all, do these apply to company pension contributions made in the 2009/10 tax year?

Thanks, Craig

Hi Craig,

Yes the rules about the Special Annual Allowance charge do apply in 2009/10 and do cover employer contributions as well as individual contributions.

Pension contributions

Hi Rebecca,

I have a problem with Special Annual Allowance excess charge. I saw your comments above but I am still having a crisis of confidence. My man has income (exc Cap Gain) of £148K His employer paid an Employers one off to his pension fund of £100K in addition to normal annual Contributions of £16,800. The extra pension payment date was 01/12/2009. I think he may have an SAAEC on his £100K less (£20K- £16,800). Am I right? I hope not.....

Thanks, Yvonne Bailey

Hi Yvonne,

OK here is the computation. Total income from the tax computation is £148,000. Deduct pension contributions that *He* has paid up to a max of £20,000. You can also deduct the gross amount of any gift aid donations. Salary sacrifice before 22 April is added back. The net of this is called the relevant income. If below £130,000 stop here SAAC not relevant. I think you're still at £148K from your comments. So not we get more complicated.

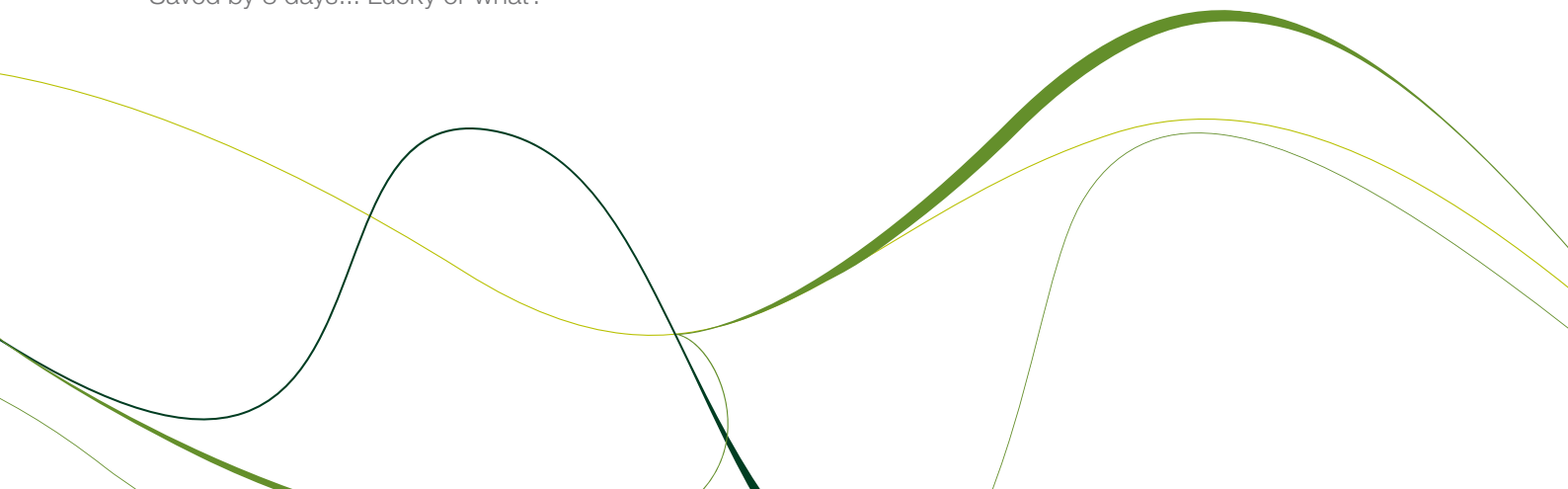
Work through the SAAC computation - total pension inputs looks like £116,800

Protected pension inputs = regular = £16,800

DEDUCT (FA2009 Sch 35 new para 16A inserted by FA2010(the first) s 48(6)) contributions made before 9 December 2009 = £100,000

Net adjusted pension input amount = NIL!

Saved by 8 days!!! Lucky or what?



Wind turbines/Land and property

Hi Rebecca ,

I have a h&w farming client with a 30 November y/e. They have recently started to receive quarterly payments in respect of 4 wind turbines recently erected on their farm. Should I treat this as income from Land & Buildings - they are guaranteed an annual minimum share of the income generated or should it be included in the Farm profits. If the former can I prepare a Rental Schedule to November annually.

Many thanks, Dylan

Hi Dylan,

I've done a bit of reading and here's what I have come up with. Technically the payments come under income from property, and although wayleave payments can be included in the farming income, the nature of the payments you describe are not like a normal wayleave for electric cables etc. So these payments fall into land and property. If the H & W operate as a normal partnership then putting the income on the land and property pages of the partnership return would be the right way to go - and furthermore you will use the accounting date for reporting - that is normal trading income basis periods - rather than the fiscal year basis which you would use for an individual. Remember that you will therefore generate overlap profits in the first couple of years - with a Nov accounting date this will be 4 months - keep a record!

Foreign currency trading

Hello Rebecca,

My client, an individual, intends to use his own funds to trade in foreign currency. He will be making several transactions a week with a view to making a profit. He has no previous experience in foreign currency transactions. How should the gains/losses be treated for tax purposes.

Thanks, Jon

Hi Jon,

A brave man (or indeed a daft one!)

If he is trading on such a regular basis I would suggest that this is a normal trade (i.e. Schedule D). If it were occasional it would certainly be taxable under CGT, but I don't think you could swing that given the volume.

Non-resident rental income

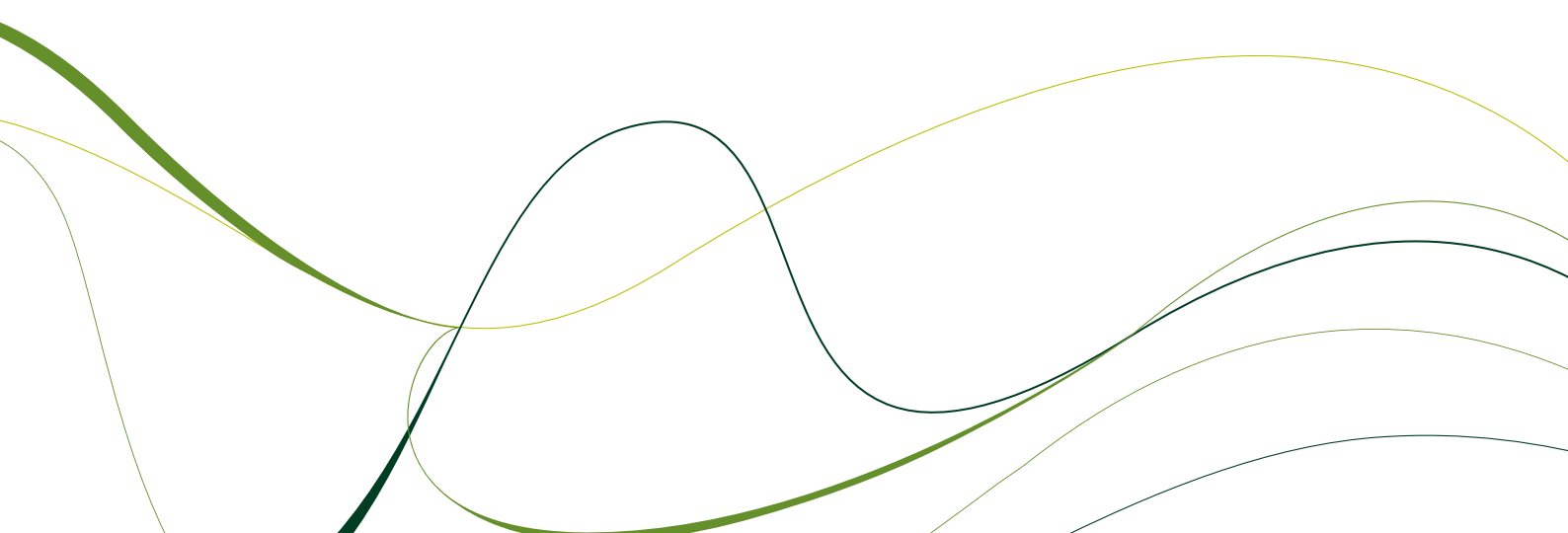
Hi Rebecca,

I feel a bit embarrassed to ask this but I've led a sheltered life. A new client (born UK) who has lived and worked in USA for many years has recently been told by HMRC she will need to fill in UK Tax Return. Her only UK income is from 2 residential properties. What will have to go on the Return?

Thanks, Chris Edwards

Hi Chris,

Sorry I started this ages ago! A non-resident is liable to UK tax on income arising in the UK. So rent from property in the UK is taxable. She may well receive the rent net of tax under the non-resident landlord scheme, so is suffering tax at source anyway. You will need to prepare rental accounts for the fiscal years affected and claim personal allowances for her on the basis that she is a British citizen (box 16 on the non-resident pages). You won't be able to use HMRC's software to do the return because they don't provide the non-resident pages. If she has any other income here - like interest on UK bank accounts declare that too.



Partnership cessation

Hi Rebecca,

I have a partnership that has ceased and transferred over pool assets into ltd Co. I am using the sage taxation suite for business tax and would like to use S266 TWDV but there doesn't appear to be the option to do this. At the moment, the Capital Allowances on cessation are being calculated and giving me a balancing charge. I need this to show nil for when I post to the partnership return. Sage have asked me where on the partnership tax return it shows S266 option so they can advise me further. Do you know where this should be recorded?
Thanks, Peter

Hi Peter,

I suggest that the only way is to put in disposal proceeds equal to TWDV, which is essentially what the election achieves. This will prompt a zero CA's in the year of disposal and you can then introduce the assets at TWDV into the company. I guess you'll have to suppress AIA etc. in the company but that won't be until the end of first period! That should achieve what you want. I suggest that you also do a formal election letter signed by the partnership and the company and send to HMRC as I'm not sure that an entry on the return counts as the election.

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