

[CGT - transactions spanning 5 April 2008](#)



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Many businesses and individuals entered into arrangements prior to the 5 April 2008 and agreed that part of the consideration be deferred until after 6 April 2008. If this involved the sale of a chargeable asset for capital gains tax purposes, have the recent significant changes to CGT affected this deferred arrangement?

There are many transactions that were undertaken under the old regime but the tax point will not have been reached until the new rules came in. This applies to many business transactions, such as take-overs or reorganisations, involving the use of loan notes. This alert points out those types of situation and what relief might be available.

If you are affected by this issue, you will need our help to see if the subsequent repayment of loan notes or other types of security are eligible for transitional arrangements, written into this year's Finance Bill.

The issues we will need to work through with you are:

1. **Entrepreneurs' Relief** – At the time the arrangement was entered into, prior to 6 April 2008, would the disposal have qualified for the new Entrepreneurs' relief?
2. **Qualifying Corporate Bonds (QCB's)** – If you agreed to defer receipt of the proceeds of a chargeable sale by issuing Loan Notes, they generally fall into two categories. Qualifying QCB's which can benefit from the new Entrepreneurs' relief, and non-qualifying QCB's which will not.
3. **Original ownership** - Care is needed as the transitional relief will only accrue to a holder of QCB's or other qualifying investments if they were the original disposer of the business assets. It is possible that these investments will have been passed, for example, to a spouse or civil partner. In such cases transitional relief will not be available. A solution could be for the recipient to now pass those shares or bonds back to secure relief on a subsequent disposal.

The three points listed above are those most likely to affect changes to your planned CGT costs, they are not exhaustive.

As highlighted above you will need our help to determine how, if at all, the expected CGT liabilities may have changed.

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We are approaching the deadline for filing P11D returns for 2007-08; returns need to be submitted by 6 July 2008 to avoid penalties. This alert covers a number of issues you may want to consider.

1. **Company Cars.** If you still pay employees with company cars for their private fuel, you may like to reconsider the policy. Not only will employees pay heavily for the privilege, you as their employer will have to pay additional Class 1A National Insurance. It is possible for employees to reimburse you for the cost of private fuel and avoid the benefit charge. They must be able to produce a log of private mileage and use the HMR&C approved petrol costs per mile rates to do this. Employees driving high CO2 emitting cars, and paying tax at the 40% rate, may be paying over £2,000 in additional tax. The average approved petrol mileage rate for 2007-08 is just over 18p per mile for cars over 2000 cc. So if your employee's private mileage is less than 11,000 miles they may be better off to repay you for their private petrol and avoid the tax charge. Every case will be different and will depend on car size, private mileage, vehicle CO2 output and your employee's marginal rate of tax.
2. **Vans.** As long as private use of a company van is restricted to approved incidental use, it should be possible for employees to avoid any benefit charge. For 2007-08 the flat rate benefit charge is £3,000 plus £500 for private fuel, if provided. You will need to have a basis for checking that your restricted private use policy is being observed.
3. **Mobile phones.** Mobile phones provided to employees, on which they are permitted to make private calls are exempt from benefit in kind, provided that the employee only has one company phone at any one time. Tax free mobile phones cannot be provided to members of the employee's family. To qualify for this exemption the contract for the phone must be in the name of the employer, not the employee.
4. **Computers provided for work.** Where the employer provides an employee with a computer, including laptops and PDA's (Blackberry devices) this will not normally be a taxable benefit. However, the requirement is that the provision of the computer is necessary for the employee to perform his duties. It is not necessary to measure the time a computer is used for business and private use – the test is whether the computer is in reality an essential tool. If so, the computer will not be taxable on the employee concerned.
5. **Broadband internet access.** Where an employer provides for Internet access (in the name of the employer) at the employee's home solely for work purposes, generally no taxable benefit arises on the employee. Where an employee is the subscriber for Internet access to his or her home, and the employer reimburses the employee for these costs, there is no scope for the exemption described above to apply, as the employer is not providing a benefit. Reimbursements are taxable as expenses payments.
6. **Staff party or other event.** One or more events may be tax free for staff, provided that the conditions are met. The events must be held annually, which must be open to staff generally. The limit is now £150 per head. The total cost of the function, including VAT and any transport or accommodation provided must be divided by the number of persons attending, irrespective of whether these persons are staff, guests of staff, or guests of the employer. If the average cost per head then exceeds £150, employees attending alone will be assessed on the cost per head so calculated, and employees bringing guests on a multiple of this cost (depending on the number of guests). It is wise to monitor costs carefully as once the limit is exceeded; the amount spent is taxable in full, rather than the excess.
7. **Payments to employees using their own car for business journeys.** Provided payments made to employees are not more than the approved mileage rates 40p for the first 10,000 miles in a tax year, 25p per mile thereafter, no benefit in kind will need to be reported on form P11D and the payments are not reported in any way. However, there is no other way of paying for business miles in a private car, so employers should ensure that the payments they make do not exceed the relevant sums, otherwise tax and NIC will be payable on the excess.

There is still time to consider a formal review of your potential P11D issues for 2007-08. A review could possibly save or reduce your employee's tax charge, and your business Class 1A National Insurance.

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This alert covers the VAT rules that apply to the supply of business services to an overseas customer.

In reality, the three key rules for a business selling goods from the UK to an overseas customer are as follows:

- if you are selling goods to a VAT registered trader in another EC country outside the UK, then obtain that customer's VAT number and don't charge VAT
- if you are selling goods to a private individual or non-VAT registered entity in another EC country outside the UK, then the VAT treatment is the same as if you were selling the same goods within the UK i.e. charge VAT on standard rated items. However, be aware that once these sales exceed certain limits in each country, a business will need to register for VAT in that country under what are known as distance selling rules
- any goods sold to a customer outside the EC are zero-rated as an export, irrespective of the status of the customer

The rules for supply of services are far more complex!

In reality, there are four potential VAT outcomes for a supply of services:

- the VAT liability is based on the location of the supplier i.e. the UK (this is the default position if the service does not fall into the other three categories)
- the VAT liability is based on the location of the overseas customer – because the service is included in the list of services shown in the VAT legislation
- the VAT liability depends on where the work is physically performed – e.g. as in the case of an opera singer
- if the service relates to land e.g. a surveyor, the place of supply is determined by where the land is located

If you are at all unsure whether you should charge VAT for services provided to overseas customers we can help.

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