

Property Matters Newsletter

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Where Does HMRC Get Information?



Mike Blackledge
Associate

01354 652304
mikeblackledge@whitingsllp.co.uk

HMRC has powers to request any information 'reasonably required to check a taxpayer's tax position'. This power is frequently exercised during an inquiry, but it is not limited to formal inquiries or business records, and it is not even limited to historic tax liabilities, but also applied to anticipated liabilities.

They also ask third parties, such as banks or letting agents, to provide information about named taxpayers, or even as-yet-unnamed taxpayers, involved with a particular kind of transaction.

The Finance Act of 2021, provided for HMRC to be able to approach banks and other financial institutions without having first to seek consent from the taxpayer or a tribunal - a so-called 'Financial Institution Notice' (FIN).

Where else do they get information from?

The following are simply examples of where they obtain information from:

- Policyholder lists from insurance companies that provide specialised services, such as landlord insurance;

- Letting agents, who may be required to provide details of gross rents received (per property, per client) in a tax year (and note how closely this now aligns with landlords operating on a cash basis, as HMRC would very much like to be the norm);
- Mortgage providers - and particularly those offering Buy To Let (BTL) mortgages
- Property websites - information on who has listed property for sale or rental; for example, Airbnb readily admits that it has shared "Data for all transactions on the platform:
- A listing in the UK; or a listing owned by a Host that's required to pay tax in the UK."

Other taxes and government channels in relation to other taxes including:

- Stamp Duty Land Tax notifications, HM Land Registry and local council information
- The new Trust Registration Service that gives information about who holds the beneficial interest in UK assets such as property;

We have been seeing within the profession a much greater level of HMRC inquiries, and therefore it is extremely important to seek advice if you have any issues, you can do so by contacting your usual Whitings LLP contact.

Types Of Ownership: Property or Land



Daniel Walker
Manager

01480 470755
danielwalker@whitingsllp.co.uk

When it comes to the ownership and renting of a UK property (or land) there are three types of ownership that are of interest when it comes to personal income tax and Capital Gains Tax, these three types of ownership are: sole ownership, joint ownership, and common ownership. When considering who owns a property, we must look at the legal owner and the beneficial owner, these are usually the same individual however, this is not always the case. The legal owner of a property officially and formally owns the title of the property and is listed on HM Land Registry, a property can be legally owned by more than one individual. This individual has all the responsibility of the legal ownership such as ensuring the property stays in sound condition and are responsible for any repairs works that are required.

Whereas a beneficial owner has all the rewards of legal ownership such as, living in the property or if the property is being let out then the receipt of the rental income, with none of the legal responsibilities.

There are several reasons why we would see the split between legal and beneficial owner:

- **Income Tax:** It may be a case that it is more tax efficient for the beneficial owner to receive the rental income rather than the legal owner. Such can be the case when a rental property is owned by spouses.
- **Capital Gains Tax** can be another reason a legal and beneficial owner are separated, as any capital gain would be due to the beneficial owner.
- It may just be a case that the legal owner does not wish to be known.
- A trust can be used to split the legal ownership and beneficial ownership, where the trustees will have legal ownership and the beneficiaries have the benefits of ownership. For example, a trust can be used when passing property to a minor, or if it is necessary to protect the asset from financial circumstances of the individuals.

Sole Ownership

A sole owner has the legal and beneficial ownership of a property, the income and capital gains are chargeable to them and are not able to be shared for tax reasons.

Joint Ownership

This is where the property is owned by multiple individuals, if one of these individuals were to pass away the property would pass automatically to the other owners and cannot be left in an individuals will until the last owner. These legal owners have an equal benefit in the property for tax purposes. A HMRC Form 17 can be filed to change the beneficial split of joint ownership.

Common Ownership

Common ownership is where a property is owned by multiple individuals, but this can be in different shares. The benefits of these properties are split in the same share as the ownership unless they are married or in a civil partnership, in which case it is split equally. Married couples and civil partners can adjust the beneficial ownership by making a declaration confirming the different split of income and capital gain.

If you have any questions regarding legal and beneficial ownerships, please contact your Whitings LLP contact and they will be able to assist you.



Rent-a-Room



Shamus Chaplin

Tax Senior

01284 752313

shamuschaplin@whitingsllp.co.uk

The UK housing market is in crisis, and there isn't enough housing stock, however the promise has always been that there will be more and more new housing being built, however if we look as far back as 1992 when the Rent-a-Room scheme was introduced to help ease the burden of the UK housing crisis at the time, this issue isn't new.

The scheme was designed to essentially provide beneficial treatment to those providing accommodation (which formed part of their main residence) to lodgers and guests.

The scheme allows for a flat deduction of £7,500 against gross income generated from the letting of an individual's main residence. Where the property in question is owned jointly, the relief is apportioned appropriately. This claim is made in lieu of deducting actual expenses incurred, this means that additional relief cannot be obtained on top of the relief, it's either one or the other!

The relief not only applies to income received in exchange for accommodation, but also where services and goods are provided, such as cleaning, laundry and meals. The relief cannot generate a loss. Therefore, where actual expenditure exceeds the relief, claiming actual expenses may be more beneficial.

Dependent upon changing circumstances, it is possible to claim rent-a-room relief in one tax year and not in another, which provides for maximum flexibility.

Of course with such a beneficial tax relief there are conditions, and they include that the accommodation provided must form part of the individual's main residence and must comprise furnished residential accommodation. This excludes any letting related to 'business use' such as offices or storage.

Where the accommodation is "self-contained", such as a flat or annex, this physical separation must be shown to be temporary to qualify under the scheme. There are many factors that need to be considered where self-contained annexes/flats are in place, some of these include future intention (i.e., is the temporary division going to cease), is the accommodation separately supplied/metered for utilities, does it have its own separate entry and are structural alterations necessary to undo the division.

It is important that an individual consults their mortgage and insurance provider before letting their main residence, to ensure a third-party rental would not be in breach of any contracts.

Whilst the above may appear, at first glance, clear cut, there are many areas where a thorough review of the circumstances, both tax and non-tax driven, are required before an informed decision of treatment is reached.

Our Whitings team of property specialists will be more than happy to assist both from a compliance and advisory perspective.



Selling Your Garden - Tax Implications



Mike Blackledge

Associate

01354 652304

mikeblackledge@whitingsllp.co.uk

You may be thinking of selling off some surplus land to a developer. If this is part of your garden, you might be thinking it's tax free because it's attached to your home. However, before you agree any sale, it's important to understand the tax implications of selling your garden. Whilst any profit from the sale of your garden may be subject to Capital Gains Tax you may be able to claim Private Residence Relief (PRR). If a successful claim is made you will not pay capital gains tax on any profit realised on sale.

If the sale of your garden is within the 'permitted area' of your main residence it can potentially qualify for PRR.

The 'permitted area' is basically a garden or grounds of up to 0.5 hectare (including the footprint of the house). HMRC might accept that a larger area qualifies for relief if the garden and grounds are required for the 'reasonable enjoyment'. Particularly if this is in keeping with the size and character of the property.

To obtain PRR on an area larger than you will need to show that the land was required for the use and enjoyment of the house. This will be a question of fact and will depend on historical evidence of usage.

If planning permission was acquired prior to, or soon after your property purchase then HMRC might consider that it was acquired purely for re-sale. If the land was

never part of your garden or permitted area and planning was obtained prior to marketing, this might also indicate you were planning to sell on at a profit.

The tax implications of selling your garden also extend to self-developing and will depend on whether you are:

- Intending to develop your garden and then sell whatever you build at a profit.
- Looking to build a new property in your garden as an investment asset for you or your family or to be your new residence.

If the former applies you will be treated as starting a trade as a property developer. You'll need to consider the value of the land once development starts. Any increase in value from the original acquisition date up to this point may be subject to Capital Gains Tax.

Any profit realised once the development has completed will be subject to Income Tax.

For further information then please contact your usual Whitings LLP contacts.



Bury St Edmunds Office
Greenwood House, Skyliner Way,
Bury St. Edmunds, Suffolk. IP32 7GY
Telephone: 01284 752313
bury@whitingsllp.co.uk

Ely Office
George Court, Bartholomew's Walk, Ely,
Cambs. CB7 4JW
Telephone: 01353 662595
ely@whitingsllp.co.uk

Kings Lynn Office
Norfolk House, Hamlin Way, Hardwick
Narrows, Kings Lynn, Norfolk. PE30 4NG
Telephone: 01553 774745
kingslynn@whitingsllp.co.uk

March Office
Fenland House, 15B Hostmoor Avenue,
March, Cambs. PE15 0AX
Telephone: 01354 652304
march@whitingsllp.co.uk

Mildenhall Office
Willow House, 46 St. Andrews Street,
Mildenhall, Bury St Edmunds,
Suffolk. IP28 7HB
Telephone: 01638 712267
mildenhall@whitingsllp.co.uk

Peterborough Office
Eco Innovation Centre, Peters Court,
City Rd, Peterborough, Cambs. PE1 1SA
Telephone: 01733 564082
peterborough@whitingsllp.co.uk

Ramsey Office
108 High Street, Ramsey,
Huntingdon, Cambs. PE26 1BS
Telephone: 01487 812441
ramsey@whitingsllp.co.uk

St Ives Office
Raleigh House,
14C Compass Point Business Park,
Stocks Bridge Way,
St Ives, Cambs. PE27 5JL
Telephone: 01480 468931
stives@whitingsllp.co.uk

St Neots Office
First Floor, Phoenix House,
2 Phoenix Park, Eaton Socon,
St Neots, Cambs. PE19 8EP
Telephone: 01480 470755
stneots@whitingsllp.co.uk

Wisbech Office
12 & 13 The Crescent, Wisbech,
Cambs. PE13 1EH
Telephone: 01945 584113
wisbech@whitingsllp.co.uk