TAXANGLES from COMPASS ACCOUNTANTS

A newsletter for proactive planning...

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August 2025 Issue

www.compassaccountants.co.uk

Tax implications of writing off a director's loan

Personal and family companies often make loans to directors. However, there can be tax and National Insurance implications of doing so. Where the loan remains outstanding nine months and one day after the end of the accounting period in which it is made, a tax charge arises on the company. Tax charges may also arise if the loan is written off.

HMRC have recently written to individuals who between 6 April 2019 and 5 April 2023 received a director's loan that has been released or written off and who may not have declared the amount written off as income on their Self Assessment tax return. Individuals affected can tell HMRC about the loan using their online disclosure service (see www.gov.uk/guidance/tell-hmrc-about-underpaid-tax-from-previous-years). An individual's agent can make the disclosure on their behalf.

Where a loan was written off after 5 April 2023 and not declared on the Self Assessment tax return, there is no need to use the disclosure service; instead, the tax return can be amended.

Tax consequences

Where a director's loan is written off, there are implications for the company and the director. If the loan is one in respect of which the company has paid tax (section 455 tax) because the loan was outstanding nine months and one day after the end of the accounting period in which the loan was made, the write off will be treated like a repayment as far as the company is concerned. This means that the company is able to apply for a repayment of the associated section 455 tax. The repayment can be claimed nine months and one day after the end of the accounting period in which the loan was written off. This can be done online (www.gov.uk/guidance/reclaim-tax-paid-by-close-companies-on-loans-to-participators-l2p). The company must declare the loan write-off on the supplementary pages of its company tax return.

As far as the director is concerned, the amount written off is treated as a distribution and taxed at the dividend tax rates. The director should declare the amount written off on their Self Assessment tax return.

Where the director is also an employee there is also a potential charge under the employment income rules. However, the dividend treatment outlined above takes precedence so there is no double charge.

National Insurance implications

The National Insurance position is more complex. Where the loan is derived from an employment, Class 1 National Insurance (employer and employee) will be due as the write-off is treated as earnings for National Insurance purposes rather than as a dividend (on which no National Insurance is due). HMRC will generally assume this to be the case.

An alternative scenario is that the write-off is shareholders' funds rather than earnings and is not related to the director's work for the company. If this is accepted to be the case, there will be no National Insurance to pay. To provide weight to this argument, the write-off should be approved at a general meeting of the shareholders or by a written resolution. However, it should be noted that HMRC may issue a successful challenge.

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Alternative approach

Rather than writing off the loan, if the company has sufficient retained profits it would be better to pay the director a dividend which could then be used to clear the loan. The income tax position will be the same, but as there is no National Insurance liability on dividends, the National Insurance issue is avoided.

Correcting errors in your VAT return

Correcting errors in your VAT return

It is easy to make mistakes when completing your VAT return. However, where mistakes are made, it is important to correct them. This is fairly straightforward to do.

Four-year window

You can correct errors in your next VAT return if the error was made in the preceding four years and it is either less than £10,000 or between £10,000 and £50,000 but less than 1% of your total sales value. Errors that are more than £50,000 or more than £10,000 and greater than 1% of the total sales value must be notified to HMRC separately, as must deliberate errors. This can be done using form VAT652 or online. HMRC have a tool which you can use to see which method is appropriate for you (see www.gov.uk/guidance/check-if-you-need-to-report-errors-in-your-vat-return). The net value of the error is the additional tax due to HMRC less any tax that is due to you from HMRC.

Adjusting your next VAT return

If your error falls within the limits permitted for correction in your next VAT return, the action that you need to take depends on whether, as a result of the error, you owe VAT to HMRC or HMRC owe you VAT. Where you owe VAT to HMRC, you need to add the amount of the error to the box 1 figure. Where HMRC owe VAT to you, the error is added to the box 4 figure. You will also need to keep details of the error, including how it arose, when it was discovered and the amount of VAT involved. You will also need to correct your VAT account.

Interest and penalties

If the error results in VAT being due to HMRC, interest and penalties may be charged. Where VAT is paid late, interest is charged from the date on which it was due to the date on which it was paid. If the payment is made more than 15 days late, late payment penalties will also apply. If the error results in a VAT repayment, repayment interest may be paid.

Tax free trivial benefits

The tax exemption for trivial benefits is a useful one as it allows employers to provide certain low-cost benefits to employees without an associated tax or National Insurance liability, such as Christmas or birthday gifts. However, not all benefits qualify, and there are some pitfalls to be wary of.

What is a 'trivial benefit'?

To qualify as a trivial benefit, the following conditions must be met.

1. The benefit is not cash or a cash voucher. A cash voucher is one that can be exchanged for cash.
2. The benefit cost is not more than £50.
3. The benefit is not made available under a salary sacrifice arrangement or pursuant to a contractual entitlement.
4. The benefit is not provided in recognition of particular services performed by the employee in the course of their employment or in anticipation of such services.

Where the employer is a close company (as is the case for most personal and family companies), the total value of tax-free trivial benefits provided in the tax year to a person who is a director or officeholder of that company or to a member of their family or household is capped at £300 a year.

Calculating the benefit cost

A benefit can only be a trivial benefit if the benefit cost does not exceed £50. The benefit cost will normally be the cost of providing the benefit. However, where the benefit is made available to more than one employee and it is impracticable to calculate the cost of providing it to each individual, the benefit cost is the average cost of providing the benefit. This is simply the total cost of providing the benefit divided by the number of people to whom it is provided.

Pitfall 1 – Rewarding service

While providing a bunch of flowers or a bottle of wine as a thank you when an employee works late might be a nice gesture, it is not one that falls within the ambit of the trivial benefits exemption as the gift is made to reward services provided by the employee. Likewise, if you provide an employee with a taxi home if they work late and the exemption for late night taxis is not in point, the trivial benefits exemption will not apply even if the fare is less than £50 as again the taxi home is provided as a 'reward' for working late.

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Pitfall 2 – Salary sacrifice arrangements

The trivial benefits exemption cannot be used in conjunction with salary sacrifice arrangements. If the employee gives up cash salary in return for a non-cash benefit, the trivial benefits exemption will not apply, even if the cost of the benefit received in exchange is not more than £50.

Pitfall 3 – Contractual obligations

The exemption does not apply to benefits to which the employee is contractually entitled. This applies not only to those explicitly stated in the employment contract, but also where there is an implied contractual arrangement. HMRC illustrated this with the somewhat extreme example of cream cakes being provided every Friday, which they argued created an implied obligation and, as such, the provision of the cakes would fall outside the scope of the trivial benefits exemption.

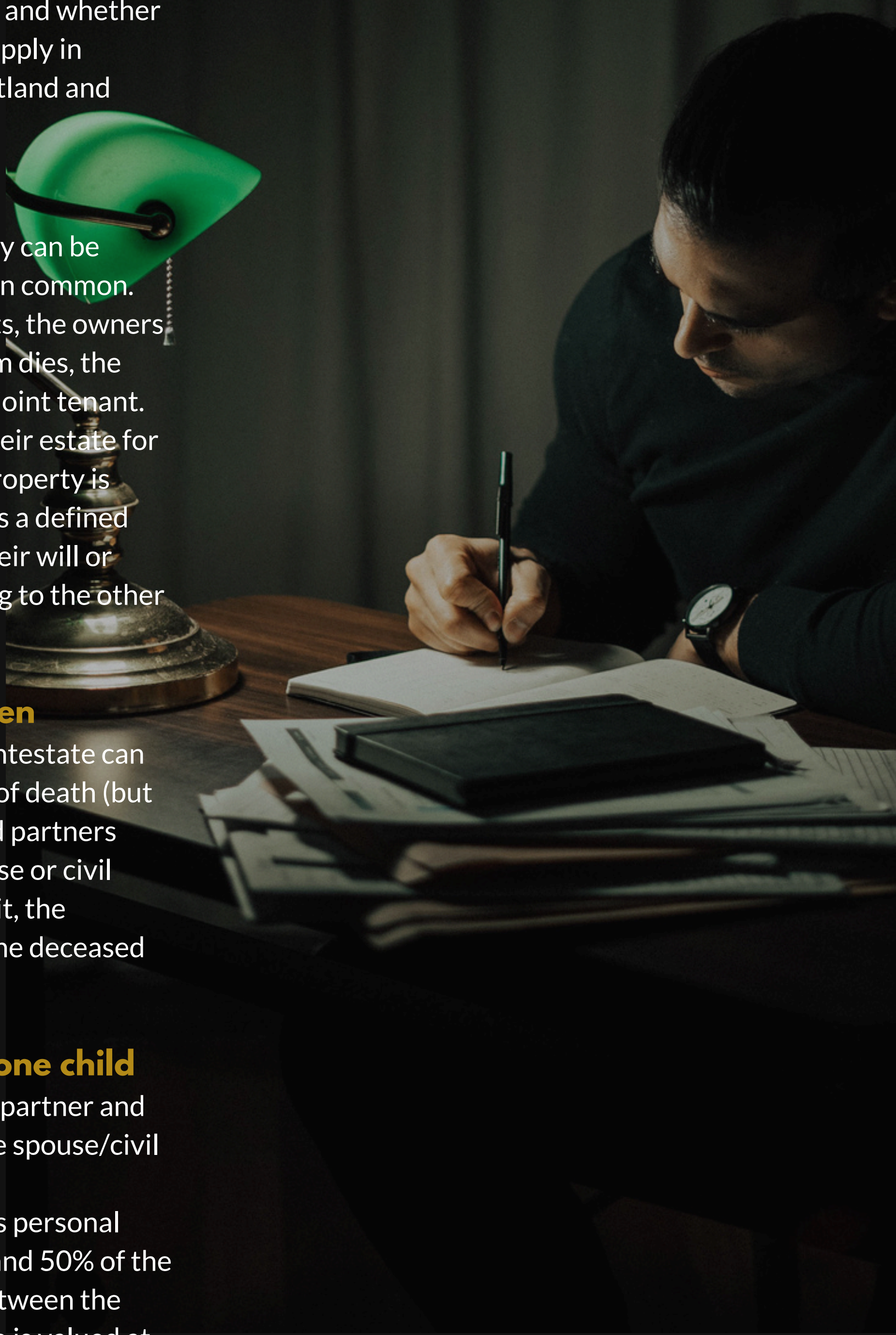
Pitfall 4 – Recurring benefits

Problems can arise if an app, season ticket or gift card is used to provide the employee with regular benefits. Where this is the case, the benefit cost is the annual value of providing the benefit, rather than the cost of each individual benefit.

Consequently, where the annual cost is more than £50, the trivial benefits exemption will not apply, even if the cost of each individual benefit does not exceed the limit. For example, if an employee is given an app which allows them to book a monthly beauty treatment at a cost of £40, the trivial benefits exemption will not apply as, at £480, the total cost of using the app during the tax year is more than the trivial benefit limit of £50; it does not matter that each individual treatment only costs £40.

What happens to your estate if you die intestate?

In an ideal world, everyone's estate would be distributed according to their wishes. However, where someone dies without making a will, who gets what is determined by the intestacy provisions. The way in which the estate is distributed depends on the value of the estate and whether the deceased is married or in a civil partnership and whether they have children. The rules explained below apply in England and Wales; different rules apply in Scotland and Northern Ireland.



Jointly owned home

In England there are two ways in which property can be jointly owned – as joint tenants and as tenants in common. Where property is jointly owned as joint tenants, the owners together own the whole property. If one of them dies, the property automatically passes to the surviving joint tenant. However, the deceased's share forms part of their estate for inheritance tax purposes. By contrast, where property is owned as tenants in common, each person owns a defined share. Their share passes in accordance with their will or under the intestacy provisions rather than going to the other tenant(s) in common.

Spouse or civil partner but no children

A spouse or civil partner of a person who died intestate can inherit even if they were separated at the date of death (but not if they were divorced). However, unmarried partners cannot inherit. If the deceased has a living spouse or civil partner, they inherit the whole estate. To inherit, the surviving spouse or civil partner must survive the deceased by at least 28 days.

Spouse or civil partner and at least one child

Where the deceased has a living spouse or civil partner and at least one child, the estate is split between the spouse/civil partner and the children.
The spouse/civil partner inherits the deceased's personal possessions, the first £322,000 of their estate and 50% of the remainder. The remainder is divided equally between the children. In the event that the deceased's estate is valued at less than £322,000, the surviving spouse/civil

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partner inherits the whole estate. Where children under the age of 18 inherit, their inheritance is held in trust until they reach the age of 18.

At least one child but no surviving spouse or civil partner

If there is no surviving spouse or civil partner, but the deceased has children, their estate is divided equally between the children.

Grandchildren

Where a child of the deceased has died before them, if they have children, they will inherit the child's share equally.

No spouse or civil partner or children

If the deceased does not have a spouse/civil partner or children, other relatives inherit in the following order:
·parents;
·siblings;
·grandparents; then
·uncles and aunts.
So, if the deceased's mother was alive and the deceased has a surviving brother and two surviving aunts, the deceased's mother would inherit the whole estate.

No surviving relatives

The estate goes to the Crown. This is called bona vacantia.

Changing the allocation

The intestacy rules may not give the best outcome and may also result in inheritance tax being payable unnecessarily. For example, where under the intestacy rules relatives other than the spouse or civil partner inherit more than the deceased's available nil rate bands, inheritance tax will be payable, whereas if the whole estate, or at least that in excess of the available nil rate bands, was left to the spouse or civil partner, no inheritance tax would be due.
This need not be a problem. As long as everyone who is over the age of 18 agrees, the allocation can be changed within two years of death by making a deed of variation. This effectively writes a will from the grave.

Calculating adjusted net income and why it matters

Employers have a duty to enrol eligible staff in a pension scheme. Staff are eligible if they are aged between 22 and state pension age and earn more than £192 per week (£833 per month). Where an employer takes on seasonal or temporary staff, they must still assess them. However, the assessment will need to take into account that the worker may only work for the employer for short periods of time, they may join and leave in the middle of pay periods and their earnings and hours may vary. The employer can use postponement to delay the assessment.

Staff working for less than three months

Where staff are taken on for less than three months, the employer can either assess them each time they are paid and enrol them in a qualifying pension scheme if they meet the eligibility criteria or make use of postponement. Under postponement, the employer can delay working out who to enrol for up to three months. An employer can only use postponement if they are within six weeks of the date on which the worker met the age and earnings criteria for automatic enrolment.

Employers who opt to use postponement must write to the workers to let them know that they are using postponement. This must be done within six weeks of the start of the postponement period. If the worker leaves before the three-month period is up, the employer is spared the need to assess them and enrol them in a pension scheme. However, eligible staff can request that the employer enrols them during the postponement period.

Staff working for more than three months

Where temporary or seasonal staff are employed and the expectation is that they will work for the employer for more than three months, the employer can either assess the staff each time they are paid and enrol them in a qualifying pension scheme if they are an eligible employee or they can use postponement. However, where they work for more than three months, postponement delays the enrolment of eligible staff rather than removing the enrolment obligation.

Postponement can run from the date that the employee started work or, if later, the date on which the employee met the age and earnings criteria for automatic enrolment. At the end of the three-month period, the employer must assess those staff to see if they are eligible employees, and if they are, enrol them in a qualifying pension scheme straight away. Where a worker is not an eligible employee, the employer can again use postponement to delay assessing them for a further three months. Workers who meet the eligibility criteria can request that the employer enrols them in a qualifying pension scheme during the postponement period.

TAX DIARY

AUGUST

1 August 2025 – Due date for corporation tax due for the year ended 31 October 2024.
19 August 2025 – PAYE and NIC deductions due for month ended 5 August 2025 (If you pay your tax electronically the due date is 22 August 2025)
19 August 2025 – Filing deadline for the CIS300 monthly return for the month ended 5 August 2025.
19 August 2025 – CIS tax deducted for the month ended 5 August 2025 is payable by today.

For further information on any of the stories in this month's newsletter, or for any other matter that Compass Accountants can assist you with, please contact us on 01329 844145 or contact@compassaccountants.co.uk

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