

contents

Tax & Civil Partnership
Regulations 2005 1251

2004 – 05 Employers
Annual Returns 1258

SA Returns
– 2006 Filing 1261

No Receipts For
Tax Returns 1261

interpretations

Authorised Investment
Funds (AIFs) 1262

Statements of Practice
and Extra Statutory
Concessions 1265

Tax & Civil Partnership Regulations 2005

Introduction

Corporation Tax

Company purchase of own shares - Section 219 ICTA 1988

Capital Allowances

Trusts and Settlements and Transfer(s) of assets abroad

Inheritance Tax and Capital Gains Tax

Individual Savings Accounts and Personal Equity Plans

Employee Benefits and Expenses and other Consequentials

Employee Share Schemes

Enterprise Investment Scheme, Venture Capital Trust Schemes

Personal Allowances

Occupational Pension Schemes

Gift Aid

Stamp Duty and Stamp Duty Land Tax

Bank and Building Society interest paid to individuals

Beneficial Ownership - Sections 282A and 282B ICTA 1988

Additional Changes

**2006 Tax Bulletin
Renewal Form
enclosed**

*Tax Bulletin is also available on the
HMRC Website at
www.hmrc.gov.uk/bulletins*

Do not be taxed by the 31 January deadline

Your clients face a £100 penalty – and further penalties along with recovery action – if their Self Assessment Tax Returns and payments do not reach the Department in time. An article regarding the deadline can be found on page 1260.

If you haven't already, why not register to use our Online services – visit our website at www.hmrc.gov.uk

Introduction

The Tax and Civil Partnership Regulations 2005 bring about tax parity between civil partners as defined in the Civil Partnership Act 2004 (CPA) and married couples and in each case those treated as such. They apply throughout the UK with effect from 5th December 2005, the implementation of the civil partnership scheme.

The CPA received Royal Assent on 18th November 2004. Its effect is to enable same-sex couples to obtain legal recognition of their relationship by forming a civil partnership. Civil partnership is an equality measure for same-sex couples, who are unable to marry. It provides for the legal recognition of same-sex partners who wish to enter into interdependent relationships that are intended to be permanent, and provides a framework whereby they acknowledge their mutual responsibilities and manage their financial arrangements.

Currently, married couples and unmarried opposite-sex co-habitants are treated differently for tax purposes, mainly affecting how they might arrange their own financial affairs and how relatives, associates and connected persons might arrange their own. Each party may be deemed to have an interest in assets or income not directly under their own control but held by or arising to others within defined family relationships.

Married couples are protected from certain charges that might otherwise arise say from the transfer of an asset one to the other. If they were not married, a transfer of value might be a taxable transaction.

But there is another side to the coin. Where a married couple holds assets or receives income, legislation might deem ownership or receipt to the other spouse and this could give rise to a charge. Further, on marriage defined family relationships are extended. Opting to marry therefore alters their tax status.

Because civil partnership is a parallel status to marriage, the Government's policy is that civil partners should be subject to all the same legal rights and responsibilities as spouses. The Government believes that the tax system should, wherever possible, adapt to reflect changes in society and the tax changes brought about by these Regulations recognise the new legal relationship that can be established under CPA. To ensure fairness, it made the commitment that legislation would be introduced to ensure that civil partners would be treated the same as married couples for tax purposes. There are, in addition, limited circumstances in which unmarried couples are treated as if they were married. Tax changes also recognise this and treat as civil partners some same-sex couples living together.

The tax changes themselves are made through the Tax and Civil Partnership Regulations 2005. They seek to fulfil the policy objectives by changing primary and secondary tax legislation.

Other changes are made through other Regulations, for example to Tax Credits and Child Benefit.

The details in this Bulletin cover what we see as the main areas of change and their expected consequences. But if an unintended consequence is encountered, it would be helpful for details to be provided to the contact points shown below so that we can deal speedily with matters that arise.

Nahid Shariff: 020 7147 2387

Corporation Tax

So far as the general taxation of companies is concerned, there are four relevant areas of the Income and Corporation Taxes Act 1988 (ICTA 1988) which are expanded to ensure tax parity between married couples and civil partners.

Section 344 ICTA 1988

Section 416/417 ICTA 1988

Section 769 ICTA 1988

Section 839 ICTA 1988.

For the purposes of Part XI Chapter 1 ICTA 1988 the definition of an "associate" in section 417(3) includes a relative which is defined at section 417(4) ICTA 1988. "Relative" means husband or wife, parent or remoter forebear, child or remoter issue, brother or sister. (For the purposes of section 13 and 13AA ICTA 1988, Extra Statutory Concession C9 restricts the definition of a relative to a husband or wife or child who is a minor.) Married partners are treated as relatives and hence are associates. This can result in companies under their control being liable to higher rates of tax. Unmarried opposite-sex couples (and by the same token same-sex couples that are not civil partners) are not to be treated as relatives.

Connected persons are defined in section 839 ICTA 1988. S 839 (2) states that "A person is connected with an individual if that person is the individual's wife or husband, or is a relative, or the wife or husband of a relative, of the individual or of the individual's wife or husband." S 839(8) states that, in this context, " 'relative' means brother, sister, ancestor or lineal descendant." Married partners are thus connected with each other. This has relevance for various other parts of the tax code, including Section 769 (see below). Unmarried same-sex couples are not connected with each other unless one partner is a relative of the other or the wife or husband of a relative or of the other person's husband or wife (section 839(2)).

Section 344 (4) ICTA 1988 states that “In determining, for the purposes of section 343, whether or to what extent a trade belongs at different times to the same persons, persons who are relatives of one another and the persons from time to time entitled to the income under any trust shall respectively be treated as a single person, and for this purpose “relative” means husband, wife, ancestor, lineal descendant, brother or sister”. This legislation has its origins in Finance Act 1954 and the target was restricted to persons who were related by blood or marriage.

Section 343 applies on the transfer of a trade (or part) between companies in at least 75 % common ownership. It effectively ignores the transfer and provides continuation treatment as far as trading losses and capital allowances are concerned. The successor is entitled to any remaining trading losses of the predecessor and the capital allowances pass at their tax written down value, any actual sale proceeds being ignored and the need for any balancing charges or allowances therefore being negated.

Per Section 769 (2)(c) ICTA, holdings of ‘connected persons’ (defined in S 839 ICTA 1988) are treated as if they were holdings of one and the same person in determining changes in shareholdings for the purposes of S 769. Changes of shareholding may, in certain circumstances, restrict the carry forward or back of various tax reliefs.

Company Purchase Of Own Shares - Section 219 ICTA 1988

If a company purchases its own shares and the conditions in Section 219 et seq are satisfied the amount paid to the shareholder may be taken as wholly a Capital Gains matter.

However, if the conditions are not satisfied the amount paid, less whatever part represented payment of capital on the shares, is a S.209 income rather than capital distribution and is taxed like a dividend. There is also however a disposal of the shares by the shareholder for Capital Gains purposes, although the distribution element might be deducted in arriving at the consideration to be brought into the Capital Gains computation.

Where a vendor with no associates - S.227 - holding shares in a company or a group has part only of his shares purchased then before S.219 can perhaps apply he must have substantially reduced his holding - S.221(1) and immediately after he must not be connected with the company or any member of the same group. (For example, a person is connected if he holds more than 30% of its issued ordinary share capital - S.228 (2)(a).)

If he has associates holding shares then additionally their joint holding must be substantially reduced - S.221(2) - and through aggregated holdings they must not be connected with the company or any member of the same group.

Associates are narrowly defined at S.227 and as the list includes husband and wife - S.227(2) – it is extended to include civil partners.

Capital Allowances

Main legislation:

Capital Allowances Act 2001, and its predecessors CAA 1990 and 1968.

The capital allowances rules follow the connected persons’ rules in section 839 ICTA 1988 and inherit the historical treatment for income tax generally.

There are some 59 references to connected persons scattered throughout capital allowances legislation, introduced in various Finance Acts. Some of the connected persons’ rules apply to prevent the manufacturing of extra allowances, or avoidance of tax charges where assets are transferred between connected persons. The connected persons rules are also sometimes more permissive. Eg they can let connected persons elect to override the normal rules for asset transfers, to prevent any tax charges or allowances arising on the transfer of an asset between them. The recipient then inherits the transferor’s Capital Allowance history for the asset.

There is a single reference to “associated companies” in relation to the long-life assets legislation (section 99 CAA 2001). This imports generally similar familial relationships as used in “connected persons”.

Broadly speaking, the rules generally recognise assets owned within the family as being within the same economic sphere and aim to ensure normal asset transfers do not produce unwarranted tax charges. But they also aim to prevent families manipulating the rules to gain a tax advantage. The rules do not recognise unmarried or same-sex partners as “connected”. But they are extended so that they include civil partners.

Trusts and Settlements, and transfer(S) of assets abroad

The settlements legislation prevents avoidance of tax by, for example, a taxpayer (e.g. husband/wife or parent) who is liable at a higher rate of tax, transferring his or her income to someone who is liable at a lower rate (e.g. spouse or child).

The effect of the legislation is to treat the income transferred as that of the settlor.

Same sex partners not being married to each other, are treated as people to whom the legislation did not formerly apply. This legislation is extended so that civil partners are treated in exactly the same way as married couples.

Main legislation:

The settlements legislation is in Part 5, Chapter 5 of the Income Tax (Trading and Other Income) Act 2005 (previously Sections 660A – 660G ICTA 1988).

Where the settlor has retained an interest in property in a settlement, or the settlement provides for income to be paid to the settlor's unmarried minor children, any income arising is treated as the settlor's income for all tax purposes. Subject to certain exceptions the settlor will have an interest in property if it or any income arising, is, or will, or may become payable to or applicable for the benefit of the settlor or his/her spouse or civil partner (or his/her minor children who are unmarried or not in a civil partnership as appropriate) in any circumstances whatsoever.

Transfer of assets abroad: Sections 739-746 ICTA 1988 recognises "husbands and wives".

Anti-avoidance provisions are triggered where an individual or that individual's husband or wife is involved in certain transactions. This legislation aims to prevent individuals avoiding income tax by means of the transfer of assets. It applies where, as a result of a transfer and/or any associated operations, income becomes payable to persons resident or domiciled outside the UK.

The legislation provides that an income tax charge may arise on the husband or wife of an individual who makes a transfer of assets, where the spouse is involved in the transfer or associated operations. This will in future apply equally to members of civil partnerships.

In addition, the practice of not normally seeking to tax under section 739 UK domiciled individuals in relation to income of their non-domiciled husband or wife, where that spouse would be outside the section 739 charge because of his or her entitlement to the remittance basis, is extended to civil partners.

Inheritance Tax and Capital Gains Tax

Inheritance Tax Act 1984, mainly section 18.
Taxation of Chargeable Gains Act 1992, mainly section 58.

The inheritance tax and capital gains tax position will depend on the parties' financial arrangements and how they own their assets. The position for a married couple will apply equally to a civil partnership.

For example:

The main provisions are that transfers of assets between married spouses

- (i) are exempt from inheritance tax; and
- (ii) do not give rise to a gain or loss for capital gains tax purposes (the donee spouse effectively steps into the donor spouse's shoes).

These provisions now apply in relation to transfers between civil partners as they do in relation to transfers between spouses.

Capital gains tax (CGT)

There are CGT reliefs that enable tax on chargeable gains to be deferred on reinvestment in other assets. Such deferral continues when these new assets are transferred between spouses. This treatment is extended to transfers between civil partners.

Where an asset which has been transferred between spouses is disposed of to a third party, the qualifying holding period for CGT taper relief purposes is the combined period when it was held by the spouses. (Taper relief reduces the effective tax rate the longer the asset is held). "Stand in shoes" provisions also apply in most cases to determine the rate at which taper relief builds up. These provisions apply in relation to transfers between civil partners as they apply in relation to transfers between spouses.

There are a number of other provisions which currently apply in relation to spouses which are extended to apply in an exactly corresponding way in relation to civil partners. The main ones are as follows.

A number of CGT anti-avoidance provisions take effect where transactions take place between "connected persons" or persons who are "associates" of each other. Spouses are connected persons and associates for these purposes (see earlier notes on Corporation Tax) which can mean more tax to pay than would be due from unmarried partners.

The CGT rules which determine where a person has an interest in a settlement treat a settlor of a settlement as having an interest in it if, for example, his or her spouse is able to derive any benefit from the settled property.

Spouses are normally able to have only one residence between them which can qualify for relief from CGT on the disposal of a "principal private residence".

The rules for connected persons and associates that apply for CGT anti-avoidance purposes extend to certain relatives and their spouses.

The CGT rules for settlor-interested offshore trusts treat a settlor as having an interest in the trust if certain relatives (ie children and grandchildren) and/or their spouses are able to derive any benefit from the settled property.

Inheritance Tax (IHT)

For IHT and its predecessor taxes, there has long been some special provision for bequests to a surviving spouse. Transfers between spouses have been exempt without limit since 1975 when capital transfer tax replaced estate duty (section 18 IHTA 1984). This exemption now applies in the same way to transfers between civil partners.

In addition to this general exemption (which is in practice by far the most important single IHT relief in point), civil partners are now treated throughout the IHT legislation in exactly the same way as spouses.

Two minor specific IHT reliefs have also been modified:

- The first (in section 11 IHTA) exempts from IHT certain dispositions made for the maintenance of the family. The second part of the definition of "dependent relative" in section 11(6) has been widened to include both parents of either party to the marriage or civil partnership.
- The second (in section 22 IHTA) exempts from IHT certain gifts made in consideration of marriage. The class of qualifying beneficiary (as defined in section 22(4)(a)) where the gift is made into settlement has been widened so that any child within the definition in section 22(2) is included (the class was previously limited to "issue of the marriage").

Individual Savings Accounts and Personal Equity Plans

Essentially each individual is entitled to take out an ISA, and their marital status is irrelevant

There are three minor areas where the ISA rules for spouses will be amended to cover a civil partner: firstly the eligibility of a spouse of a Crown employee serving overseas to subscribe to an ISA; secondly the ability of a husband or wife to subscribe to an ISA account on behalf of their spouse who lacks the mental capacity to operate their own ISA account; and thirdly the restriction on purchasing investments from their spouse. This third amendment has also been made for PEPs.

Investors must be resident and ordinarily resident in the UK for tax purposes, in order to take out an ISA. There is an exception to this rule in that Crown employees such as diplomats or members of the armed forces who are working overseas are allowed to take out an ISA whilst they are overseas. In addition the husband or wife of one of these Crown employees who is with them on their posting overseas is also allowed to take out an ISA.

Originally only Crown servants serving overseas were allowed to take out ISAs, when not resident and ordinarily resident in UK. Following review of the operation of ISAs in 2000-2001, this privileged facility extended to their spouses as it was felt that it was unfair that accompanying spouses were not able to take out ISAs. But extending to accompanying same sex and unmarried partners was not possible because of difficulties in establishing whether there was a genuine relationship. The same difficulties prevented a change to the restriction on purchase of the spouse's investments. Those barriers for civil partners are removed.

The main legislation:

Section 333 ICTA – which set up the ISA scheme and gave power to make regulations.

The Individual Savings Account Regulations 1998 (S I 1998 No 1870) as amended - more specifically :

Regulation 10 (2) (d) (ii) and (iii) and regulation 12(3)(f)(iii) deal with Crown employees serving overseas and their spouses,

Regulation 6 (3) (b) (ii) deals with purchase of investments from spouses, and

Regulation 12(12) deals with an application on behalf of someone suffering from mental disorder.

The Personal Equity Plan Regulations 1989 (SI 1989/469) are amended, specifically

Regulation 5(2)(b)(ii) deals with purchase of investments from spouses.

Employee Benefits and Expenses and other Consequentials

Main legislation: Chapters 3 - 11 ITEPA 2003

Generally speaking the approach is to prevent tax/Class 1A NICs avoidance of employers paying benefits to spouses and family instead of direct to the employee, by bringing into charge on the employee payments and benefits made to the spouse or family. (And often to any other member of the employee's household as well.)

The definition of family or household is at Section 721(5) ITEPA and will be extended;

"his spouse, his sons and daughters and their spouses, his parents and his servants, dependants and guests."

But there are minor differences in rules and definitions that apply for specific benefits, eg one or two apply to `relatives` or `relations` as defined, and `children` generally, but not always, does not include illegitimate children.

There are areas of legislation where an opposite-sex couple is treated as married:

Sections 61(4), 318C(8), 665, 669, 673, 674 and 675 of the Income Tax (Earnings and Pensions Act 2003 and regulation 2(5) of the Social Security Contributions (Intermediaries) Regulations 2000.

These sections either provide that a man and a woman living together as husband and wife shall be treated as if they were married or make equal provision for married and unmarried couples. They now apply equally to those same-sex couples living together as civil partners.

Employee Share Schemes

Married partners are treated as “connected persons” for the purposes of material interest tests (to see if an employee is eligible to participate in approved employee share schemes), and also for anti avoidance purposes (where, for example, benefits are received by a connected person rather than directly by the employee.)

We generally follow the definition in s839 ICTA 1988 – A person is connected with an individual if that person is the individual's wife or husband, or is a relative, or the wife or husband or a relative, of the individual or of the individual's wife or husband (and relative means brother, sister, ancestor or lineal descendant).

Main legislation:

Primarily s839 ICTA 1988; but also s162(6)(a), s721(5), s135(6)(b), s140H(4)(c)(ii), Para 8 Sch 9 ICTA 1988, s83 FA 88, Para 34 Sch 14 FA 2000, Para 20 Sch 8 FA 2000

The sections above relate to income tax. However, similar issues arise in the area of National Insurance Contributions. For example s10ZA(1)(b) SSCBA 1992 says that a Class 1A contribution is payable where a benefit is provided for a member of the earner's family or household – and family or household is construed in accordance with s168(4) ICTA 1988 – which refers to “spouse” and sons and daughters and their “spouses”. For both income tax and NIC, the scope of the legislation is extended to treat civil partners as it treats spouses.

Enterprise Investment Scheme, Venture Capital Trust Schemes

The definition of ‘associate’ within this legislation has the meaning in section 417(3) and (4) ICTA and includes husband or wife (except that in those subsections relative includes brother or sister) chiefly for anti-avoidance provisions. The effect is that where an individual is excluded, a married partner is also excluded, so that marriage, and thus now registering as civil partners, could be regarded as a disadvantage.

In some cases the legislation also uses the rule regarding connected persons at section 839 ICTA, with broadly the same effect.

The capitals gains tax provisions for these areas provide for the transfer of shares between spouses - further details have been provided in the earlier capital gains notes.

Main legislation:

Enterprise Investment Scheme:

Sections 289-312 ICTA 1988

Taxation of Chargeable Gains Act 1992 (TCGA) Schedule 5B

Venture Capital Trusts:

ICTA Schedule 15B, Schedule 28B.

Corporate Venturing Scheme:

Finance Act 2000 Schedule 15

Personal Allowances

Under Independent taxation all individuals are taxed separately. However, there are currently two tax allowances which are affected by marital status, Section 257A ICTA 1988 (amended by Finance Act 1999) for Married Couple's Allowance and Section 265 ICTA 1988 for Blind Person's Allowance.

The Regulations bring about changes:

Married Couple's Allowance (MCA) for those born before 6 April 1935 (MCA was abolished for younger couples from 6/4/2000 by FA 1999.). This is a single allowance (one per couple).

Married Couple's Allowance (MCA) is currently available to married couples where one of the spouses was born before 6 April 1935. We currently give MCA, on claim, to the husband. From 5th December 2005, civil partners will have similar rights and MCA will be available to married couples and civil partners. From that date civil partnerships, and also new marriages, meeting the age criteria will, on claim from the spouse or civil partner with the higher income, receive the allowance.

For a couple who married before 5th December 2005, the husband will continue to receive MCA. However from tax year 2006-07 the couple will be able to elect instead for the spouse with the higher income to claim MCA under the new rules. This rule change provides existing claimants with increased options. There is no financial advantage to be gained from this. Indeed it is possible the couple may reduce their overall entitlement to MCA if the wife has a higher income and exceeds the income limit. The income limit for 2005-06 is currently £19,500.

The Blind Person's Allowance (BPA) contains a provision that any unused allowance (because the person does not have sufficient income) can be transferred to their spouse. Surplus BPA can now be transferred to their civil partner.

Pension Schemes

HMRC will not refuse to approve a pension scheme because the scheme provides pensions for widows or widowers of deceased scheme members. However, it is for the pension scheme provider to decide whether or not any such survivors' benefits will be paid in the event of the death of the member; there is no HMRC legislative requirement to do so.

The current HMRC legislation does not recognise unmarried heterosexual partners or same sex partners as qualifying to receive pension benefits as a "spouse" of the member. But the legislation permits the payment of a pension to a "dependant" and it is for a pension scheme provider to decide whether to pay dependants' benefits in the event of the death of the member. Generally, it is necessary to demonstrate financial dependence (or financial interdependence) in order to qualify for a dependant's pension. So, an unmarried heterosexual partner or a same sex partner of a pension scheme member who satisfies the financial dependency test can qualify for a "dependant's" pension on the death of their scheme member partner

From 5 December 2005, HMRC will not refuse to approve a pension scheme because the scheme provides a pension to the surviving civil partner in the event of the death of a scheme member, in the same way that a pension might be paid to the surviving spouse of a deceased member.

Main legislation (augmented by Finance Acts and Statutory Instruments):

Income Corporation & Taxes Act 1988 – Part XIV

Chapter I – Retirement Benefit Schemes

Chapter III – Retirement Annuities

Chapter IV – Personal Pension Schemes

Note this legislation will be replaced by new HMRC rules for pension schemes in Part 4 of Finance Act 2004 with effect from 6th April 2006. These new rules will also recognise civil partners in the same way as the current rules will recognise civil partners from 5 December 2005.

Gift Aid

Section 25(2), Finance Act 1990

Married partners are included when considering whether the level of benefits received by the donor and married partner is permitted in return for a Gift Aid donation. (This follows the traditional interpretation of "connected person" at s839 ICTA 1988.)

The concept is that donor may receive a benefit for a charitable donation which can be enjoyed not only by himself but also with other members of his family. This is extended to civil partners.

Stamp Duty and Stamp Duty Land Tax

There is an exemption from stamp duty and SDLT for transactions carried out in connection with divorce such as a transfer of shares or the transfer of the marital home from joint ownership into the sole ownership of one of the ex-spouses. There is a similar exemption for transactions carried out in connection with the dissolution of a civil partnership.

Bank and Building Society Interest paid to individuals

Banks and building societies are required by law to deduct tax at the lower rate (20%) before paying interest to savers, unless they have authority to pay the interest gross, that is, without tax taken off. The category of people who can sign a gross registration declaration (on form R85) on behalf of a person who lacks the mental capacity to operate their own bank or building society account is extended to include civil partners.

Income Tax (Deposit-takers)(Interest Payments) Regulations 1990 (SI 1990/2232) Regulation 5(1)(b)(v)

Income Tax (Building Societies)(Dividends and Interest) Regulations 1990 (SI 1990/2231) Regulation 5(2)(b)(v).

Beneficial Ownership - Sections 282A and 282B ICTA 1988

Married couples frequently own property jointly and the Revenue treats them as though the property is held equally so any income arising is taxed 50/50. However, if the couple are not in fact entitled to half the income each, they can elect to have income from property they hold jointly taxed on a basis other than 50/50. Civil partners are treated in exactly the same way.

Additional Changes

Beyond Equivalent Treatment

The amendments that go beyond providing equivalent treatment for civil partners are: section 11 and 22 of IHTA 1984; sections 257A, 257BA, 257BB and 347B of ICTA; sections 77(4) and 169F of, and paragraph 2 of Schedule 5 to, the TCGA 1992; and section 625 (2) of ITTOIA 2005.

For IHT purposes, gifts made before the marriage takes place can be recognised for the purposes of section 22. This principle will apply equally to civil partnerships. And for section 11 the scope of dependant relatives is also extended.

As mentioned earlier, for marriages and civil partnerships entered into on or after 5th December 2005, the section 257A allowance is to go to the one with the higher income. The clauses deal with interim claims and end of year adjustments. Provision is also made for those married before 5th December 2005 to elect to opt into the new scheme, but also to leave the present scheme untouched for those who do not want change.

As for payments made for the maintenance of a child of the family, in order to qualify under section 347B the person making the payment need not be a party to a marriage but only a parent.

Amendments to clauses also provide for a civil partnership equivalent of "marriage settlement" in relation to section 22 IHTA 1984 sections 77(4) and 169F(5) of, and paragraph 2(4) of Schedule 5 to, TCGA and section 625(2) of ITTOIA. This is to provide for both civil partnership settlements and marriage settlements an extension as regards issue to include children from previous relationships and adopted children (whether adopted by one or both parties).

Tax Credits and Child Benefit

The Tax Credits Act 2002 introduced two tax credits – the child tax credit and the working tax credit. They began to be paid in April 2003. Married and unmarried opposite-sex couples are required to make joint tax credit claims based on their combined circumstances and income.

Currently, members of same-sex couples have to make separate claims based on their individual circumstances and income. When the Civil Partnership Act comes into force on 5 December, same-sex couples will be required to make joint tax credit claims on the same basis as opposite-sex couples, whether or not they form a civil partnership.

From that date, a person who lives with a same-sex partner and is receiving the child or working tax credits should, as soon as possible, contact the Tax Credits Office or call the Tax Credits Helpline on 0845 300 3900 (for Great Britain) or 0845 603 2000 (for Northern Ireland). They may also call in person at any HMRC Enquiry Centre. The longer they leave it to tell HMRC, the longer they may be receiving more tax credits than they are entitled to. If they do not advise HMRC within three months, they will not only have to pay back any overpaid tax credits but may also have to pay a penalty.

Child benefit is a weekly benefit payable to a person responsible for a child, regardless of income. A higher rate of child benefit is paid for the eldest child in a family. Normally, if two families join together to become one family, the higher rate of child benefit will only be paid for the eldest child in the new family.

From 5 December, if someone is living with a same-sex partner as a couple, whether or not they form a civil partnership, and they are both getting the higher rate of child benefit, they need to tell the Child Benefit Office as soon as possible. They can do this by writing to the Child Benefit Office or by phoning the Child Benefit Helpline on 0845 302 1444 (for Great Britain) or 0845 603 2000 (for Northern Ireland).

The Child Benefit Office will then decide which person will get the higher rate. If the claimants fail to do this, they may receive an overpayment of child benefit which they will be asked to pay back.

2004- 05 Employer's Annual Returns: Update

We finished processing Returns sent over the Internet that had no errors in them at the end of September. The tax-free payments for online filing have been credited to those small employers' accounts.

But we need to put right errors that employers have made in a further 100,000+ Returns. This has to be completed before the tax-free payment can be credited to those employers' payment records.

In the vast majority of cases we will take the corrective action ourselves, but may need to contact the submitter to get the correct information. In rare cases, we may ask for the Return to be re-submitted. We hope to complete this work by early 2006.

We have been processing paper and magnetic media Returns since the end of October and expect to have finished by the end of the year.

Online filing 2004-05: tax-free payment letters

For employers registered to use PAYE Online for Employers - Internet, the 'letter' was sent to their Secure Mailbox. If the employer uses a payroll agent, and has given us authority to send information to them online, the letter will go to the agent's Secure Mailbox.

The 'letter' states that the £250 has been credited to the current year (2005-06) and gives the employer the option of claiming a repayment. In a cessation case the letter confirms that we will credit the £250 to the last open year on the employer's record.

The letters for Returns that did not contain errors were all sent out by 10 November. Once each of the Returns with errors is corrected, we will credit the tax-free payment to the employer's payment record and send a letter to confirm this.

The tax-free payment will remain allocated in full to 2005-06 if the employer does not ask for repayment but chooses to 'self-serve' the payment by reducing a future PAYE remittance to us. Only where the employer asks for a repayment, will we review our records to check that the employer is up to date for all PAYE years and has no Employer's Annual Returns outstanding.

Before we send the repayment, we will recover any outstanding amounts, but we do tell the employer separately why the repayment is not the full amount (or if we cannot repay at all).

The letter sent when we repay the tax-free payment shows the amount as an overpayment of tax and National Insurance. We only complete the tax-free payment line where the employer has ceased.

Common Errors in Returns

We have experienced some data quality issues in the 2004-05 Employer's Annual Returns. To help improve things for next year for employers, agents and us, we have been working with representative bodies to identify some of the most common errors. You may find this list of errors and solutions useful when completing 2005-06 Returns.

2004-05 common Return errors

Completed Returns

Error	Solution
Tax codes – incorrect characters and format	<ul style="list-style-type: none"> • Use the code number as provided by HMRC. • Do not use all five spaces of the code number field (unless the code takes them up). • Do not use leading zeros in (K123 not K0123). • Suffix 'K' must always be shown before the numbers (K123 not 123K). • Do not use 'W', 'X' 'WK1' or '/1' after the code number to show that week one applied. • 'left justify' each code number within the field. • Do not use suffix 'H'. Use 'T' instead and refer all existing H codes to your HMRC Office for correction. • For codes '0T' and 'D0', the number '0' must be used, not the letter 'o'.
Date of birth	<ul style="list-style-type: none"> • Only use genuine dates (avoid 30 February, for example). • Do not use dates in the future.
Invalid NINO prefixes (for example NI, PZ, TN).	Use an acceptable NINO prefix (a list is published in the Quality Standard each year). Or, if the NINO is not known, leave the NINO field blank and make an entry in the date of birth and gender fields instead.
Addresses – leading spaces and punctuation	<ul style="list-style-type: none"> • First character in 'Name' and 'Address' fields must be a letter, not a comma, apostrophe, full stop or space. • Do not leave an empty line in the middle of the address. • Postcode field must be in the right format (WC2B 4RD, for example).
Forename field – incorrect characters	<ul style="list-style-type: none"> • Only use A-Z upper or lower case, hyphen or apostrophe. • Second forenames should shown in a 'Fore' field. • Do not enter a full stop, comma, underscore, brackets, slash, numbers (including 0), an asterisk (*) or question mark (?). • Do not use character '?' for an apostrophe, use "'". Surname field – incorrect characters Only use A-Z upper or lower case, numbers 0-9, comma, period, forward slash, ampersand (&), hyphen, space, apostrophe and brackets. • The first character must be alpha. • Do not leave leading or trailing spaces. • Do not enter an asterisk (*) or use '0' (zero) in place of 'O'. • Do not use character '(' for an apostrophe, use "'". For example, 'O'Connor' not 'O Connor'.

Completed Returns (continued)

Error	Solution
Pay and National Insurance earnings – figures	<ul style="list-style-type: none">• The lowest acceptable entry for the pay field and National Insurance earnings fields 1a – 1c is '0.00'.• Only use negative figures when sending an amendment.• Always show monetary values to two decimal places.• Do not use commas.
More than one Return for the same scheme	Do not send us the same information on paper once you have filed online. If the paper Return is the first received, it will be treated as the original Return. That means small employers will not qualify for the tax-free incentive payment and large employers will get a penalty.
PAYE reference – incorrect format	<ul style="list-style-type: none">• A valid PAYE reference is made up of the three-digit HMRC office number and the employer's PAYE reference, for example 913/WZ51258. Do not show only the employer reference (WZ51258), or use the HMRC office number twice (913/913WZ51258).• Check with your client for any changes to the three-digit HMRC office during the year.
Compressed Return	<ul style="list-style-type: none">• Make sure that your software uses the correct compression routines.• Contact your HMRC Account Manager before sending your Return.

Returns sent in parts

Error	Solution
Part submissions – Incorrect number of parts	<ul style="list-style-type: none">• The number of parts shown must relate only to the number of parts sent containing P14 data. Do not include the P35 or any P38A in your count of the number of parts.• The number of parts must be the number of bundles or submissions sent (online, on paper or by magnetic media). It must not reflect the number of P14s.
Part submission – P35 with each part	<ul style="list-style-type: none">• Do not send a P35 with every part submission of P14s.• Each part containing paper P14s must be accompanied by a 'P35 (cover sheet)'.• We recommend that you only send the P35 after you have sent all your P14 parts.
Part submissions – using the same Unique Identity on more than one part	You must use a different Unique Identity number for each part of P14s sent. Using the same identity for a latter part means that the information on the first submission will be overwritten and lost.

Do more online!

As well as sending Employers Annual Returns online, did you know you can send in-year forms, like P45(1), P45(3), P46 and P46 Car, online? And you can get information from us online, like notices of coding. It is faster and you can use our free Online Return and Forms PAYE product.

2005-06 Employer's Annual Returns

Before employers file Returns for 2005-06, we will be taking every opportunity to help them get them right. And your support will be vital by making sure that:

- this year's common errors (see previous page) are avoided,
- online Returns meet the Quality Standard for 2005-06,

- magnetic media Returns meet the requirements of the magnetic media specification CA51/52, and
- paper Returns are completed in line with the guidance given in our E10 booklet *Finishing the tax year up to 5 April 2006*.

To avoid the late filing penalty, we recommend that you do not leave it until the last minute to submit any Return.

Once a complete Return (all the P14s and the P35) has been successfully submitted, it cannot be replaced. Any changes will have to be made by sending an amendment to the Return.

Once Returns have passed our quality checks, we will hold them before sending the details in them on to our other computer systems.

Part submissions

A whole Return cannot be finalised and accepted until all the P14 parts are married up to the corresponding P35.

If you send a 2005-06 Return in parts, we strongly recommend that the P35 is the last item to be submitted.

Our systems will overwrite any part Returns that have the same Unique ID. So each part must have a different Unique ID, unless you mean for us to replace the file.

P14 parts will be held until all parts have been submitted. During this period, you or your client can send a replacement part so long as the replacement shows the same Unique Identifier as the original. Once the P35 and the P14 parts have been brought together and we have accepted them, the Return - in whole or part - can only be changed by sending in an amended Return.

Tax-free incentive payment for 2005-06

The online filing tax-free incentive payment will be credited to small employers' payment records when the Return has been processed to our other systems. We will then send a 'letter' confirming this. Once the employer has this letter, they can self-serve the tax-free incentive payment by deducting £250 from the next 2006-07 payment to us.

REMEMBER! Employers who had 50 or more employees when we wrote to them in November 2004 must file their 2005-06 Employer's Annual Return online.

SA Tax Returns - 2006 Filing

Tuesday 31 January

Tax Returns received up to midnight are on time. This includes Tax Returns received in Office letter boxes that are opened first thing on Wednesday morning.

Wednesday 1 February

Tax Returns received up to midnight are late but incur no late-filing penalty. This includes Tax Returns received in Office letter boxes that are opened first thing on Thursday morning.

Thursday 2 February

Tax Returns received from the morning post and onwards are late and incur a late-filing penalty.

Help us to Help You

To help us capture Tax Returns efficiently, please use these few tips

- Please do not use paperclips.
- Please do not tag or staple several Tax Returns together. There is a risk that only the top Tax Return will be recorded as received.

- Any correspondence that has no bearing on the Tax Return, such as claims or correspondence relating to another year or requests for reductions to Payments On Account (SA 303), should be sent separately from bulk Tax Returns. Please make sure that you use the correct postcode and reference on the correspondence. That way it will be dealt more quickly.
- Please clearly mark any change of address on the front of the Tax Return.
- If using a substitute Tax Return please enter the client's name, address and UTR (Unique Tax Reference). Please mark the Tax Return clearly if it is a new Self Assessment customer and, if a new self-employment case, let us have the NINO. We recommend that you send the completed CWF1 to the National Insurance Contributions Office.
- Always make sure you enter the exact UTR on the Tax Return. The UTR is unique to each individual. In particular, make sure that you enter both the partners' and partnership UTR where appropriate when dealing with a partnership.
- If a Tax Return contains a bar code, please do not use it for any client other than the one it was intended for. If you do, there is a risk that the Tax Return will be recorded on someone else's record.
- Send cheques separately from the Tax Return and write the UTR on the back. The cheque will be dealt with more quickly.
- File online: it's quicker, more secure, you get an automatic receipt and, if your client is due a repayment, it'll be done quicker.

This article is based on material, which has appeared in Working Together.

No receipts for Tax Returns

We will not provide receipts for SA Tax Returns handed in at Enquiry Centres.

It has never been the policy of the department (there is no statutory obligation), to acknowledge returns delivered by hand or post. Your client will be advised of the details arising from the Return either in a Tax Calculation or a Statement of Account. The taxpayer is advised of the details arising from the return either in a Tax Calculation or a statement of account.

There has been a growing trend in recent years of agents delivering Returns by hand (often in large numbers) to Enquiry Centres and requesting receipts. Local practice in Enquiry Centres has varied but where receipts have been given, staff have spent large amounts of time checking Returns before providing a receipt. Clearly this is not efficient

use of our resources but more significantly the practice has meant that customers who genuinely require a face to face service have to wait longer or do not receive a service at all.

All Enquiry Centres will decline to provide receipts for Returns delivered by hand.

Interpretation

Authorised Investment funds (AIFs): Loan Relationships and Derivative Contracts

Tax Bulletin 60 (issued August 2002) set out the tax treatment of authorised investment funds (Authorised Unit Trusts and Open-ended Investment Companies) that invest in loan relationships and derivative contracts following the introduction of the derivative contracts legislation and revisions to the loan relationships rules in FA 2002. It also clarified the Revenue's approach to the taxation of profits from futures and options following the repeal of section 468AA ICTA (which provided that such profits of AIFs would not be taxed as trading income). This was that while it is impossible to say, in advance of a transaction taking place, that it is not going to be a trading transaction, the general and prevailing assumption is that authorised funds will not be conducting a trade. They are investment vehicles and are regulated as such.

This update is in response to concerns raised by the fund management industry that this approach may change following the publication by the FSA of a new Sourcebook (COLL) for authorised funds (March 2004).

COLL introduces a new kind of non retail authorised investment fund available only to institutional and sophisticated investors, referred to as the Qualified Investor Scheme (QIS). With particular application to QIS, COLL also makes some changes to the investment flexibility available to authorised funds that wish to invest in derivative contracts. For example funds are now allowed to hold derivative contracts as assets in their own right, whereas previously, they were restricted to using derivatives to hedge capital or income positions.

Derivative Contracts and Loan Relationships

We can confirm that HMRC's approach to the taxation of profits arising on derivative contracts is unchanged from that set out in TB 60. Provided the fund properly applies the accounting treatment set out in the accounting SORP, the tax treatment will follow from that. The inclusion of gains or losses from derivative contracts in the capital or income columns of the statement of total return will depend upon the nature of the transaction. The tax treatment will follow the presentation in accounts prepared in accordance with the SORP. This applies to derivatives taken out to protect

a capital or an income position, as well as to derivatives that are held as assets in their own right to enhance capital or income.

Trading or investing

We also continue to receive questions on what constitutes trading activities for AIFs.

There remains a general and prevailing assumption that AIFs will not be conducting a trade. The new investment strategies allowed by COLL do not alter that presumption. The existence or otherwise of a trade for tax purposes is always a question of fact, and the factors taken into account for determining whether or not a body is trading are well known.

Inland Revenue Statements of Practice and Extra-Statutory Concessions issued between 01/10/2005 to 30/11/2005.

Extra Statutory Concessions

There have been no Extra Statutory Concessions for this period

Statements of Practice

There have been no Statements of Practice for this period

You can get the latest copies of SPs and ESCs by telephoning Chandra Chandramohan, on 020 7147 2363.

CONTENT

The content of Tax Bulletin gives the views of our technical specialists on particular issues. The information published is reported because it may be of interest to tax practitioners. Publication will be six times a year, and include a cumulative index issued on an annual basis.

- You can expect that interpretations of the law contained in the Bulletin will normally be applied in relevant cases, but this is subject to a number of qualifications.
- Particular cases may turn on their own facts, or context, and because every possible situation cannot be covered, there may be circumstances in which the interpretation given here will not apply.
- There may also be circumstances in which the Board would find it necessary to argue for a different interpretation in appeal proceedings.
- The Bulletin does not replace formal Statements of Practice.
- The Board's view of the law may change in the future. Readers will be notified of any changes in future editions.
- All the names used in examples and illustrations are imaginary and have no relation to real persons, living or dead, except by coincidence

Nothing in this Bulletin affects a taxpayer's right of appeal on any point.

Letters on any article appearing in Tax Bulletin should be sent to the Editor, Mr Shell Makwana, Room 2C/09, 100 Parliament Street, London, SW1A 2BQ or e-mail Shell.Makwana@hmrc.gsi.gov.uk. We are sorry though that neither he nor our contributors will normally be able to enter into correspondence about Tax Bulletin or its contents.

SUBSCRIPTION

The subscription for 2005 is £22. If you would like to subscribe to Tax Bulletin please send your name and address together with your cheque to HMRC, Finance Division, Barrington Road, Worthing, West Sussex BN12 4XH. Cheques should be crossed and made payable to "HMRC".

If you would like information regarding Tax Bulletin subscription, distribution or general information, please contact Mrs Jayne Harler, Assistant Editor, Room 2C/06, 100 Parliament Street, London, SW1A 2BQ on 020 7147 2317. E-mail jayne.harler@hmrc.gsi.gov.uk

COPYRIGHT

Tax Bulletin is covered by Crown Copyright. There is no objection to firms copying the Bulletin for their own use. Anyone wishing to republish Tax Bulletin or extracts more widely should write for permission to Miss Glenda Bishop, Room G28, New Wing, Somerset House, Strand, London, WC2R 1LB.