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2012winteredition

As 2012 gets underway, our team are conscious of the increasing change in the approach of HM Revenue & Customs (HMRC). In its former guise, HM Inspector of Taxes had a gentlemanly approach to the collection of taxes, a negotiation and settlement method which had operated for many years and which UK citizens were comfortable with but since its amalgamation with HM Customs and Excise and the £900m investment to tackle tax avoidance, tax evasion and fraud in a drive to recover up to £7bn lost each year by 2014 a more vigorous and often heavy handed approach is the order of the day.

HMRC are keen to emphasise to the general public their counteraction to tax evasion but are frequently confusing the public between tax evasion and tax avoidance. These are not one and the same. There is no doubt that tax evasion is illegal and should be dealt with through the judicial system however tax avoidance is every UK citizen's right.

In this edition of Pay Less Tax we plan to bring you some of the ideas and latest thinking which you may find useful when conducting your business and personal affairs in order to pay less tax!

Seed Enterprise Investment Schemes (SEIS)

The 2012 Draft Finance Bill brought in a new type of investment which is particularly tax efficient for those who have an asset (whether used in their business or not) which has appreciated substantially over the years and which is now holds the potential to generate a substantial capital gains tax burden.

The investment is specifically targeted to provide capital for new small companies and for the investor could attract total **tax relief of up to 78%!** Meaning an investment of £100,000 could cost only £22,000!

The investor can invest up to a limit of investment of £100,000 but this must equate to an investment of less than 30% of the share capital. The company must be a new start up or in existence for 2 years or less and be a small company – less than 25 employees and assets of less than £200,000.

The major benefits to an individual of such an investment is that should the investment be made in the year which commences on 6 April 2012 then there would be a complete capital gains tax not just a deferral of the payment but a full exemption on the gain. Only the gain needs to be reinvested into a SEIS not the full proceeds and the investment should be made during the one tax year 2012/13.

If the asset disposed of is a business asset and the individual qualifies for entrepreneurs' relief then the individual stands to save the capital gains tax at 10% plus income tax relief of 50% on the investment itself. For example if a business asset is disposed of in 2012/13 and the individual reinvests the gain into an SEIS then they would save 10% capital gains tax and 50% income tax making the investment of £100,000 actually only cost £40,000! The big bonus is where the asset is a non business asset and the gain is reinvested in a SEIS during 2012/13. The individual will save the capital gains tax on the £100,000 investment i.e. £28,000 and will attract income tax relief of 50%. The 50% rate is applicable no matter what rate of income tax the individual is chargeable at.

EBT and EFRB are dead. Long live the EBT/EFRB

On 6 December 2011 HM Revenue and Customs published their intentions allowing them to charge class 1 National Insurance contributions on funds extracted from EBT's (Employee Benefit Trusts) and EFRBS (Employer Financed Retirement Benefit Scheme) under the Disguised Remuneration rules.

Many still have funds in EBT and EFRBs

Many taxpayers have used these strategies in the past to extract funds from companies in a tax efficient manner. Such structures are very much still viable if executed correctly and do not trigger the disguised remuneration legislation enshrined in Finance Act 2011. Also some taxpayers have found that they have funds 'trapped' within the resulting trusts or may simply wish to collapse existing arrangements. It remains possible to access these funds without incurring punitive rates of tax and national insurance, or indeed create new trusts without the significant tax burden.

Tip

If you have these funds we can help you! Discuss extracting them without the imposition of PAYE and NIC with a member of the team and let us help you manage the extraction in a tax efficient manner!

Stop Press

Liechtenstein Disclosure Facility (LDF).

HM Revenue & Customs (HMRC) granted an opportunity in September 2009 to individuals and organisations with potential tax liabilities linked to investments or assets in Liechtenstein. The opportunity is to settle their tax liability under a special arrangement where they would receive a fixed penalty of 10% on the tax liabilities which had been unpaid.

Clients are able to extend the arrangement to worldwide income and gains which they had previously not disclosed to HMRC in preparation for a new imitative which HMRC Offshore Co-ordination Unit will begin to pursue on individuals and organisations with undisclosed off shore assets.

Many have already used the Liechtenstein Disclosure Facility (LDF) to advise their undisclosed income and gains and it will continue to run until 31 March 2015. In order to qualify for this facility an asset must be held in Liechtenstein and until December 2011 a bank account opened with £1 was considered sufficient, however the banking authorities in Liechtenstein have become overwhelmed by the number of bank accounts being opened. They have therefore raised the minimum opening deposit for a new bank account to £50,000 restricting this opportunity now to those of high net worth.

HMRC have, over the last few years, acquired information relating to individuals and organisations with off shore accounts and their next target will be UK residents and organisations holding Swiss bank accounts with the HSBC in Geneva who may not have reported all their income and gains to HMRC.

HMRC has already begun criminal and serious fraud investigations into more than 500 individuals and organisations holding these accounts and will shortly be writing to those who have not yet come forward, or are not currently under investigation. They will be offered a window of opportunity to contact HMRC and disclose all their tax liabilities. If they do not come forward, HMRC will begin an investigation into their affairs, which could include a criminal investigation or result in penalties, in certain circumstances, of up to 200 per cent.

Should you hold an off shore bank account or any off shore assets which you wish to discuss then please contact the office so that we can help you take advantage of the disclosure window saving £1,000's in penalty charges, the disruption of an investigation but most importantly the worry of a criminal investigation.

Hot off the Press

ISA subscription limits for 2012-13

The annual Individual Savings Account (ISA) subscription limits increase each year in line with the Consumer Prices Index (CPI). The new limit is calculated using the CPI in the September before the start of the new tax year, and the figure is rounded to the nearest multiple of 120. This enables individuals who save monthly to be able to calculate their monthly savings more easily.

The CPI for September 2011, is calculated by the Office for National Statistics, and was 5.2 % making the 2012-13 overall ISA subscription limit £11,280. Of this limit up to half - £5,640 can be subscribed to a cash ISA and the balance can be invested in stocks and shares.

Winds of Change

If you are considering winding up a limited company you have until 1st March 2012 to use a concession which HM Revenue and Customs (HMRC) are withdrawing on that date.

Tax law is not the only basis used for implementing the tax collecting function of HMRC. There are a series of shortcuts called Extra Statutory Concessions (ESC) which have been developed over the years to ensure the smooth operation of tax law.

The process for winding up of a company is in the Companies Act 2006 and in the Insolvency Act 2001 and entails a formal winding up using the services of an insolvency practitioner, administrator or liquidators but the process for some companies has been allowed to be shortcut by these ESCs for many years.

Up until 1st March 2012 the effect of the shortcut is that the shareholder can withdraw his funds from the company as a capital payment which is chargeable to Capital Gains tax – and when the shareholder is entitled to Entrepreneurs' Relief the rate of tax chargeable on this is only 10%. If the shareholder is not entitled to Entrepreneurs' relief then the rate of tax is 18% or 28% depending on the income levels of the shareholder. In most small owner managed companies being wound up the shareholder would be entitled to Entrepreneurs Relief.

Without the capital treatment the withdrawal of funds from the company would be treated as an income distribution and charged to tax at the shareholders highest rate of tax which could be 25% for a higher rate tax payer or 36.1% for an additional rate tax payer.

After 1st March 2012 where the company has more than £25,000 to distribute these distributions all will be treated as income distributions unless the company elects to go down the line of a formal winding up.

The impact on the company being wound up is financial. The company will now have to elect to proceed down the lines of a formal winding up in order to secure the capital treatment for its directors and shareholders, rather than using the informal, more tax efficient route previously open to them. The cost of a formal winding up may be restrictive as the average charges of insolvency practitioner, administrator or liquidators are quoted as being in the region of £7,500.

The impact on the director / shareholder, who is entitled to Entrepreneurs relief, is greater as the amount to be distributed becomes larger. For example profits after tax held in the company of £100,000 available to an additional rate tax payer, chargeable to income tax at the highest rate of 50%, the income tax payable would be **£36,100** as opposed to using the shortcut and being charged to Capital Gains Tax (CGT) of £10,000 (not accounting for the annual exemption of £10,600 which would reduce the CGT to **£8,920.**

Hot off the Press

Attention all Business Clients – Business Records Check

In 2012 HM Revenue and Customs (HMRC) plans to spot check the paperwork of 20,000 companies and potentially fine those with sub-standard records up to **£3,000.** The original spot checks carried out between April and July 2011 where targeted on examining companies' proof of expenses and income dating back years. The Revenue said that during its spot checks around 44% of businesses visited had issues with their record-keeping, with around 12% of the total having serious inadequacies.

HMRC have been accused recently of setting unrealistic criteria for small business records and the checks will place a considerable burden on small businesses which could possibly drive some into insolvency.

Tip

We will be happy to review your record keeping to ensure you are fully compliant and ready for the introduction of the business records check scheme. Please telephone your client manager to arrange an appointment to discuss how we can help you and guide you through the process. If you are subject to one of the spot checks please telephone your account manager immediately.

e-Bay ware

Since its foundation in 1995 e-bay has accelerated the rise in online auction and shopping sales. Originally funded by venture capital (which has similarities origins to the Seed EIS discussed in this newsletter) the firm has soared to a massive multibillion dollar worldwide trading group, it continues to acquire European auction sites and has separate sites such as e-Bay UK to allow traders to use local currencies.

With on-line headlines such as ***'£2500 per week e-Bay power seller secrets'*** there is no wonder that HM Revenue and Custom (HMRC) are making e-Bay and other online auction traders the target for the summers 2012 tax amnesty but surely consumer to consumer sales on e-Bay are not taxable and of no interest to the Tax Man?

Is this source of selling old unwanted items quickly becoming a source of additional income and falling to be taxed by HMRC as a trade?

Personal Items

Well not all items need to be considered when looking at the possibility of trading – whatever method used for sale. These items are your own personal property, your old clothes, household goods, jewellery, paintings, furniture, toys which are no longer used by your children. Provided these items are sold for a consideration of £6,000 or less then they are exempt from Capital Gain Tax. Consideration of more than £6,000 you should talk to us immediately so we can advise you on your prospective liability to tax.

'It's my hobby'

'Addictive' some may say – the ease at which an item can be acquired from a car boot sale, family, friend or neighbour for a low cost and sold on a site or resold at a car boot or antique market at a profit. But when is it a hobby and when are you trading and liable to pay tax?

With personal effects there is a £6,000 cut off and this is a clear line however with trading there is no lower limit which defines trading. HMRC will consider each case individually to decide if there is a trade or an adventure in the nature of a trade, they will consider the frequency and the individuals intentions when the items for sale where initially purchased.

If HMRC win a case for the income to be trading income then the effect is not only a higher tax bill but the implications extend to the individuals Tax Credits claim or any income based benefits he may receive.

Already a trader?

Established traders may legitimately use the internet sites as an extension of their business activities however it should also be remembered that one business can be linked with another for VAT purposes if it is run from the same premises. So even if the sales are unrelated to the established business the profit will still be taxable and may push the trader over the VAT threshold.

Losses

It is unlikely that losses will be incurred on this type of trading however for losses to be relieved it has to be established that there is trading and therefore the potential for a taxable profit. If a trader is incurring losses without any real prospect of realising a profit, HMRC will consider that he must have another purpose or motive for undertaking the trade. This may be because the trade is a hobby or maybe it gives the individual personal enjoyment.

Many inexperienced e-marketplace sellers never consider the tax implications of their regular buying and selling and it is these individuals who HMRC want to target. Because there is a definite paper trail for transactions, usually a PayPal account or direct credit transfer from a bank account, it is a simple process for HMRC to request details of regular sales on these auction sites during an enquiry. By using their web robot software to scan the internet for regular transactions and anomalies those not paying the right amount of tax may no longer hide.

We recommend you do not approach the HMRC directly if you consider that you have an e-marketplace issue. HMRC are increasingly tough negotiators and having the right team behind you in these circumstances will alleviate much of the stress and the potential problems. Contact your account manager should you wish to discuss this issue.

Stop Press

First time buyers – Time is running out

Time is running out for first time buyers to save **£2,500** in Stamp Duty on the purchase of their first property. The thresholds for first time buyers is **zero %** on purchases up to £250,000 but the rate increases to 1% on 24 March 2012.

Business clients - Ready to make an expensive purchase of plant and machinery?

HM Revenue and Customs (HMRC) are not giving very much away during these harsh times and so it will be no surprise to our business customers to hear that the allowance you receive in your accounts for your large capital spending on items of plant and machinery will fall from April 2012. From that time only the first £25,000 spent on allowable plant and machinery in a single chargeable period, will receive 100% tax relief. This has been reduced from the previous £100,000 cap. Meaning that expenditure on allowable plant and machinery over the £25,000 cap will now be subject to an annual allowance given in the accounts of between 8% and 18% - a massive drop in the amount you can claim when an expensive piece of plant or machinery is purchased.

Tip

Let our team calculate the allowance now before you make the purchase, especially if your year end is not April 2012. We can advise you how to maximise the tax allowance you receive by correctly timing your purchase.

Calculating the amount that may be claimed

When a business buys property it acquires a combination of assets. These include land and buildings (ie, the 'building', 'structure' or 'premises') that do not qualify for capital allowances as well as plant and machinery fixtures, the cost of which can be written-off for tax.

Fixtures typically include assets like fire alarms and sanitary equipment (such as WC, basins etc) plus many others. For expenditure incurred from April 2008 they include major building elements now specifically designated as plant in all circumstances by Capital Allowances Act 2001 These are called 'integral features' and include electrical systems and lighting; cold and hot water; heating, ventilating and air conditioning; lifts and external solar shading.

Let us ensure you are receiving the allowance you are due to by arranging for a **free of charge review** of your business premises to ensure all of these items are properly allowed for in your accounts.

We can help

We can help you by ensuring that you're aware of the changes that will affect you, your family and your business. To find out more about the ways that we can help you, do not hesitate to contact us.

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