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AUTUMN NEWS

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Depends on your viewpoint

This year tax has been splashed over the front pages of the papers. HMRC agreeing sweet deals for big businesses – celebrities using tax avoidance schemes – government organisations being managed by people outside the PAYE system. Some react: 'Shocking, they should be paying more tax.' Others say: 'Shocking, why am I not doing that?' People have different attitudes – most would prefer lower tax bills, but how far would you go to achieve that?

There are plenty of ways to cut your present or future tax bills without raising HMRC's pulse-rate. Some are described in this newsletter. The main risk with these ideas is that they aren't properly put into effect. We're always happy to discuss with you what you could save, and make sure you do whatever's needed to make a plan effective.

Then there are plans which are more arguable. Some are well-known, such as using a personal company to 'disguise employment' in order to avoid PAYE and NIC. HMRC have recently published a new set of guidelines on 'IR35' – their counter-measure – that clarifies how they intend to police the boundaries. If you supply your own services through a company, we can check how it looks in this new light. HMRC may be doing the same.

Other schemes, with code-names and confidentiality clauses and artificial transactions, come with substantial risks. If HMRC attack them, participants could incur legal costs even if they win. If the plan doesn't work – as the Court of Appeal recently decided on a 2003 scheme to make an £11m gain 'disappear' – there may be penalties and interest to pay as well as the tax and the costs. And even if they succeed, there's the chance of bad publicity at a time when the press seems keen to sling mud at people who are not 'all in this together'.

Next year, to add to everything else, we are likely to have a 'General Anti-Abuse Rule', which will attempt to make artificial plans ineffective anyway – once the lawyers have finished arguing about what's artificial.

Whatever your attitude to tax, we are here to help. ●

Ooo la la!

Do you own a property in France, or are you thinking of buying one? Either way you should consider the new taxes which will affect non-resident owners of French properties.

Social security charges (Contribution Sociale Généralisée, or CSG) of 15.5% have been added to income tax on rental income from 1 January 2012, and to capital gains tax charged on gains made from selling French properties from 18 August 2012. This has increased the effective tax rate on rents to 35.5%, and the tax on gains to 34.5% for UK residents – the rate varies according to the taxpayer's home country.

HMRC has been asked to confirm that the CSG can be offset against UK income and capital gains taxes under the double tax agreement between the UK and France. On the assumption that the CSG is off-settable, a UK resident who pays income tax at 40% or 50% will pay the same total income tax on rent as before, but a basic-rate UK taxpayer will pay more in French tax than the 20% UK tax rate, and will be worse off.

The trouble lies with tax on gains made on French property, as the French maximum rate of 34.5% is now much higher than the UK rates of 18% and 28%. However, the French tax rate is reduced once a property has been held for three years, and is eliminated altogether once the property has been held for 30 years or more (this is to be cut to 22 years).

If you have property abroad, we can help you pay the right amount of tax on your income or gains. ●

PAYE revolution

Real Time Information (RTI) is a new way of submitting payroll data to the Tax Office. Instead of sending PAYE information to HMRC once after the end of the tax year, under RTI employers must submit their payroll data online every time their employees are paid. This is the biggest revolution in the operation of PAYE since 1945.

Once RTI is running HMRC won't have to do end of year reconciliations of PAYE deducted and due for every employee and pensioner, as up-to-date pay and pension information will be received during the tax year. The Department for Work and Pensions (DWP) also need RTI in order to make accurate top-up payments to employees under the new Universal Credit benefit.

If you run a computerised payroll, your payroll software should be updated to cope with RTI. However, you should check with your software provider, as some packages are not going to be revised for RTI. In that case you will have to find new payroll software, or use the free facility provided by HMRC (for up to 9 employees), or ask us to help you process your payroll each month.

Some employers are already running an RTI pilot scheme, but it will be compulsory for most employers and pension providers by April 2013. When you receive HMRC's invitation next year to join RTI, you can't refuse.

The first step towards a smooth transition to RTI is to clean up your payroll data. This means checking you have accurate full names (not just initials or nick-names) and correct NI numbers for every employee. Dates of birth and addresses should also be checked. RTI will require you to report the hours worked by each employee, so you need to have a system in place to collect that information. ●

Starting in business

When you start your own business there is a lot of information to take on board about registering with HMRC, keeping records, filing tax forms and paying taxes. This can be a bit daunting, so HMRC have launched a short online course that covers all the basics.

It was written for farmers, particularly those starting out, or who are beginning to diversify, but it will be useful for any new sole trader business. We can help you with all your business administration issues, but this short course will give you the background to understand why certain registrations and payments need to be made. ●

Partnership traps

A partnership exists where two or more people work together with a view to making a profit from a business. There doesn't have to be a formal partnership agreement in place, but it's a good idea to have one drawn up if you intend to trade in this way.

Before choosing to operate as a partnership, in preference to say a limited company, it's worth considering the downsides.

A partnership must submit a separate tax return for the firm to HMRC, in addition to the partners' own personal tax returns. If that tax return is late, every partner is charged a £100 penalty. The firm's nominated partner can appeal against this, but the other partners cannot. HMRC won't accept changes to the partnership tax return from anyone other than the nominated partner. This means if the partners disagree, the junior members have little control over the tax and penalties they have to pay.

A combination of a partnership and a company is often presented as a means to save tax, but this structure doesn't always work, as a recent case showed. A partnership owned the cars used by members of the Cooper family, but two were also directors of the family company. HMRC taxed those two people on the cars provided to all the others, arguing that all the cars were provided to their relations by reason of the directors' employment and their personal relationships. The tax tribunal agreed.

If the partnership includes a company as a member, the partnership can't claim the annual investment allowance (AIA), which gives 100% deduction for the cost of equipment. The AIA currently covers up to £25,000 of equipment purchased per year.

If you want to discuss the best vehicle for your business, we'll be happy to help. ●

P46 short

HMRC have released a new shorter P46 form, which is only one page long. This form can be used by employers to collect tax details when a new employee arrives without a form P45. However, the new P46 (short) should not be submitted directly to HMRC – it's designed for internal use by employers only. ●

Tax on children?

The official title of a new measure coming in from 7 January 2013 is 'the high income child benefit charge' (HICBC). It will apply to taxpayers with annual income of £50,000 or more, who either claim child benefit, or have a spouse or partner who does. HMRC are about to send letters to child benefit claimants to explain this new charge and who has to pay it.

Here are a few facts:

The HICBC is not a tax on child benefit: it is a charge that claws back the child benefit received by the family, pound for pound, up to 100% of the benefit received.

The HICBC is calculated as 1% of the child benefit received by the family for every £100 of income above £50,000, looking only at the income of the higher earner. Those earning £60,000 or more have 100% of the child benefit clawed back.

Although the child benefit may be paid to person A, the tax charge must be paid by the higher earner in the relationship, who may be person B.

Person B will need to know how much child benefit person A is claiming in order to declare that amount of benefit on their self-assessment tax return form.

Person A can elect not to receive the child benefit, but person B (who pays the charge) cannot force person A to make this election.

This election allows person A to retain the right to NIC credits which count towards the state pension entitlement.

This charge, announced in the March 2012 Budget, will make the tax system much more complicated – as if it needed that. We can advise you on how you will be affected. ●

How much is that car?

Do you fancy a new car? If you want your company to buy one for you to use, you should first consider the tax costs for the company and for you personally.

HMRC provide an online calculator which will work out the taxable benefit for you where the company provides the car, but this only works for 2012/13 and earlier tax years. We can help you work out your tax position for future tax years.

The taxable benefit for using a company car has been increasing year on year, supposedly as an environmental measure, but the charges on even the cleanest cars are going up. The taxable benefit for electric cars is due to leap from zero to 13% of the car's list price from 2015/16.

The question of whether the company or you should purchase or lease the car involves factors other than the taxable benefit, so you need to consider all of the following costs:

- insurance;
- repairs and servicing;
- finance to pay for the car;
- leasing costs which may be disallowable for tax purposes; and
- any capital allowances claimable by the company.

If that sends your brain into a spin, we'll be happy to give you a steer. ●

Into the long grass

In 2011 a Tax Tribunal decided that the UK's rules on VAT exemption for sports clubs didn't comply with European law. Members' golf clubs in particular would probably be entitled to refunds on green fees charged to non-members over the last four years. Not surprisingly, HMRC appealed the decision, and the Upper Tribunal has decided to seek a ruling from the European Court of Justice. That can take a couple of years.

In the meantime, HMRC say that they will not pay claims from other golf clubs, and they are not inviting any more claims. But if any golf club wants to jump on this particular bandwagon, they should do so as soon as possible – the four-year limit on repayments runs from when you put the claim in. We can't tell which way the decision will go, but we can advise you on what's involved in a VAT claim. ●

Is a taskforce coming your way?

HMRC taskforces are teams of investigators who target particular trades in defined parts of the country with one-to-one visits. A typical team contains specialists to cover each tax the business pays (VAT, PAYE, corporation or income tax), and a computer expert to help access computerised business records or the shop till.

Trades selected for investigation so far have included scrap-metal dealers, car dealers, market traders, taxi firms, restaurants, builders, hairdressers, pubs and night-clubs. Most of these businesses tend to receive significant income in cash, or pay cash for goods. Cash creates the opportunity and the temptation to leave something out of the records, and HMRC have a cynical view of cash-based businesses.

However, the taskforce teams have recently turned their attention to non-cash areas such as private landlords who may not be declaring their rental income, and lawyers in the London area.

The taskforce team will normally make an appointment to visit the business, rather than just turning up unannounced. If you receive such a request from HMRC, please inform us immediately. We will speak to the HMRC officer concerned to establish the purpose of the visit. This conversation may be enough to limit the scope of the investigation, or cancel it altogether. For example if we can confirm that all your staff are paid through PAYE, give the PAYE scheme reference number and the amount of tax paid in the previous tax year, the PAYE specialist might stay at home. ●

Papers in order

If you don't have a VAT receipt, you're not supposed to claim the VAT on an expense, even if it's a proper business cost. The rule is there because HMRC want to be confident that the supplier has paid the VAT over to them – they want to see a bit of paper with the supplier's VAT number on it, so they are sure they're registered and can follow it up if necessary.

What if you are sure that the supplier is registered, but they won't give you a VAT receipt? Some big businesses which deal mainly with the public don't like issuing full invoices, so they try to brush people off – mobile phone networks and utility companies are examples. Sometimes the supplier has a point – if you're a business customer, you may have to pay a higher tariff, so it might be better to keep quiet and not worry about the VAT.

Someone discovered recently that Amazon won't issue a VAT invoice for a Kindle, because your agreement on buying the Kindle (who reads those before ticking them?) says that you won't use it for business purposes. The law says that they have to issue a VAT invoice to a VAT registered person who asks for one, and it's then up to the customer to claim or not according to business use – but it's hard to have an argument with such a big company.

In some circumstances, it's legal to claim input tax without a VAT invoice if you can show HMRC that the supplier was registered and you definitely incurred the expense – they can accept alternative evidence, and they shouldn't refuse unreasonably. But bear in mind that your files of VAT invoices are one of the first things that a visiting officer will look through – claiming without the right paperwork risks an argument at best, and a cost at worst. ●

Students disadvantaged

The P38S form is used to ensure that students don't pay more tax than they have to on holiday jobs, and it's been a blessing for many. Unfortunately as part of the move towards RTI, P38S will be withdrawn from 6 April 2013. After that, students will be treated just like any other employees.

Form P38S has always been voluntary for employers, but its withdrawal will disadvantage many students who earn less than their personal allowance during the tax year. From April 2013 they will have tax and NICs deducted from their wages. Such students will be able to use form P50 to reclaim tax deducted within the tax year, but many students (and employers) are unaware of form P50. ●

The campaign trail

The powers that be have decided that specific tax campaigns targeted at discrete groups of traders are the best way to bring unpaid tax into the nation's coffers. We've had different campaigns aimed at medics, plumbers, tutors, electricians and e-traders.

The latest campaign is aimed at direct sellers – those who sell products on a commission basis in customers' homes. These people often earn very little from their efforts, so it's surprising that HMRC is targeting this sector. However, the HMRC website says the campaign will focus on helping door-to-door sellers understand their tax obligations.

Following swiftly on will be a campaign targeting builders and tradesmen who provide home maintenance, repair or home improvement services. Such tradesmen may not be registered with HMRC under the construction industry scheme (CIS), if they only work in the domestic market. If you are such a builder or tradesperson, now could be a good time to talk to us about any tax-related worries you may have. ●

Alterations altered

One of the VAT changes announced in the March Budget was the ending of VAT relief for approved alterations to listed buildings from 1 October 2012. The Chancellor rightly said that the rules have been peculiar – VAT has been charged on repairing listed buildings, but not charged on altering them. As we can't extend the VAT relief to repairs – Europe won't let us – surely we should remove the incentive to make changes?

There was a huge protest that the VAT relief helps preserve old buildings by allowing them to be given a new use – otherwise they might be left to decay. After backing down on pasties, Mr Osborne stuck to his policy here.

However, there was an even stronger argument that changing the rules so quickly was unfair – people who had been working their way through the planning system and scraping together the money for a big project would have to get the whole thing finished by 30 September 2012 or find all their sums were thrown out by 20%. The rules have been softened so that projects where planning permission had been applied for before 21 March 2012, which are completed by 30 September 2015, will still get the old relief. But if the consent hadn't been applied for by Budget day, it's back to the drawing board. ●

Going concern concerns

If you buy a business as a going concern, there's no VAT to pay. But if the business includes – or is – a building which the vendor has opted to tax, the purchaser has to jump through some extra hoops to secure VAT-free status. In a recent case, the solicitors acting for both sides had put in their letters that the parties should 'use their best efforts' to make the transaction VAT-free, but no-one stopped to explain what that meant to the buyers. So they didn't do what they should have done – opted to tax and told HMRC before the purchase was complete – and when HMRC picked up on it a couple of years later, there was a mess.

HMRC can get this wrong as well. A property development company (RFL) had a lease from the Belfast Harbour Commissioners that RFL couldn't assign – but it could grant a sub-lease. RFL found a tenant, and decided to transfer the right to rental income to another company – by granting a sub-lease 3 days shorter than the head-lease, which RFL had to retain. HMRC argued that this couldn't be a transfer of a going concern, because RFL had created a new legal title rather than disposing of what it owned. The Tribunal didn't agree: the substance of the transaction was a full transfer of the economic rights, and what had been retained was incidental. No VAT was due.

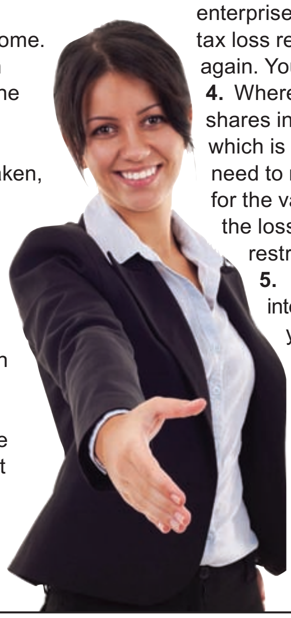
Property transactions and transfers of businesses are fraught with dangers in relation to VAT as well as other taxes. We'll be happy to help you pick your way through them. ●

Reasons to be careful

We are living through miserable financial times, but the Government is planning to pile on the pain for the self-employed by restricting tax relief for losses made and interest paid. These deductions will be subject to an annual cap of the higher of:

- £50,000; and
- 25% of the taxpayer's income.

The law is due to change with effect from 6 April 2013, but the proposed cap on losses and interest will affect investment decisions you have already taken, or are considering, such as:



1. How to structure a new business. Losses created within unincorporated businesses from 6 April 2013 onwards will have less scope for relief than at present.

2. Where your business will make significant losses for the current accounting period that ends in 2013/14, you may be thinking of offsetting those losses by selling land or other assets standing at a gain. Such plans need to be reviewed if the loss relief is to be restricted in 2013/14.

3. If you are planning to invest in Enterprise Investment Scheme or Seed EIS shares in the expectation that if the enterprise goes bust, you will get income tax loss relief on the capital invested, think again. Your loss relief may be restricted.

4. Where you have subscribed for shares in a private trading company which is sliding into insolvency, you may need to make a negligible value claim for the value of those shares to ensure the loss falls in 2012/13 – it may be restricted from 2013/14.

5. If you pay significant amounts of interest on your partnership loans, you may need to restructure those loans before 6 April 2013, to ensure the loan interest paid does not exceed 25% of your income.

Please talk to us to clarify how the proposed loss and interest relief restrictions will affect your business and investments. ●

Eeny-meeny...

Zero-rated, lower-rated, standard rated, exempt – sometimes VAT can seem like a game of chance. A recent change of policy by HMRC illustrates how much sense it can all make.

Years ago, domestic power was zero-rated. They put it up to 8% to pay for the abolition of the poll tax (that many years ago), then cut it back to 5%. But they allowed connection charges to remain zero-rated.

They've now decided that this isn't right – maybe the European Commission has come knocking. So if you get a plumber or an electrician to connect you to the mains, that will be standard rated. Except... if you pay the power company to do it, it'll be treated as incidental to the gas or electricity, and the same rate will apply to everything – 5%.

And if you're having a new house built, new houses are zero-rated anyway, and the connection charges will be part of that.

If you are having difficulty telling which rate of VAT should apply to what you do, we'll be happy to advise you. ●