2019 SPRING NEWS

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Tax is constantly changing

Businesses are constantly evolving to adapt to changing markets. The tax system similarly changes to keep up with new business structures and innovative ways to avoid tax.

One such tax avoidance trick, which is perceived to be a particular problem in the construction industry, is when firms charge and collect VAT, but disappear before they pay that VAT over to HMRC. The solution is a 'reverse charge' mechanism that will apply to builders, contractors and other trades associated with the building industry.

From 1 October 2019 those VAT-registered building firms will be required to charge themselves VAT when they buy building-related services from other firms in the construction industry.

It will work like this: Firm A does work for Firm B, and both are VAT registered. Firm A will issue an invoice to Firm B that says its services are subject to a reverse charge. Firm B adds the VAT that A would have charged to the cost of the work undertaken by A, but only within its own VAT records. Firm B does not pay the VAT to Firm A, but instead pays the VAT directly to HMRC.

There are a ream of exemptions from this new reverse charge system, such as where A and B are landlord and tenant, or are companies within the same group. We can help you sort out when you may need to apply the reverse charge.

One challenge will be to ensure that your accounting software deals with the new reverse charge correctly.

This comes on top of the other major changes to VAT this year: Making Tax Digital (MTD), which applies for most VAT-registered businesses for VAT periods beginning on or after 1 April 2019. However, some businesses have a deferred start date for MTD, being the first VAT period beginning on or after 1 October 2019. This is the same day that the construction industry reverse charge starts!

VAT returns are the first to be automated under the MTD banner, and conversion of other types of tax returns to full MTD automation is expected. However, in the Spring Statement on 13 March 2019 the Chancellor announced that no other taxes would be drawn into MTD in 2020. This marks a slow down in the MTD program, which is welcomed, as with everything else going on, businesses have quite enough to cope with! ●

Off-plan purchase trap

When you sell your main home the profit you make is normally exempt from tax, but that depends on whether you occupied the property (or were deemed to occupy it) throughout your entire period of ownership.

When you acquire a property before it has been fully constructed, you will own it for a period before it is habitable. This can apply where a property is purchased 'off-plan', but it will depend on the precise terms of the purchase contract.

For Capital Gains Tax purposes, your ownership period begins on the day on which contracts for purchase are agreed and exchanged, not on the day the contract is completed. For an off-plan purchase, the contracts may be exchanged many months or years before the property is finished and ready to inhabit.

As HMRC assumes the gain on the sale of your property accrues equally over the period you have owned it, a large part of the gain may be allocated to the period before you were able to move in.

If you purchased your home 'off-plan', we should review your purchase contracts before you sell the property. If the contract contained conditions which introduced break points in the agreement to purchase, the ownership period may be calculated from a different date, which will reduce your taxable gain. ●

Making Tax Digital Software

The Making Tax Digital (MTD) regulations come into force for periods starting from 1 April 2019 for most businesses which are required to be VAT registered because their annual turnover is £85,000 or more. They must keep their VAT records in a digital format and send VAT returns directly from MTD-compliant software to HMRC.

If you use accounting software which automatically sends your VAT return to HMRC, you are 90% ready for the MTD regime. Ask your software provider when you will receive the upgraded MTD-compatible software. Once that upgrade is installed and tested you can register with HMRC to submit returns under MTD, or we can do that for you.

Where you use a spreadsheet or other accounting software to compile the VAT figures, and manually type them into HMRC's online VAT form, you are halfway to MTD compliance. You need to install some 'bridging software' to pull numbers from your spreadsheet and push them through an application program interface (API) into HMRC's system. Most accounting software packages will allow the data to be downloaded as a CVS file, which can be read by the bridging software just like a spreadsheet.

Businesses that operate an entirely paper-based accounting system have a bigger mountain to climb. Some form of accounting software or spreadsheet will be required, but this doesn't have to be a cloud-based accounting package.

When choosing accounting software, be aware of what you need it to do. Some accounting packages won't cope with the VAT adjustments needed for partial exemption or margin schemes, or even with accounts that run to the tax year end: 5 April.

The purpose of MTD is to encourage businesses to use an entirely digital accounting system, where the data from each transaction is automatically summarised and, with any necessary adjustments, flows into the VAT return. In between there should be no human retyping of figures or cutting and pasting of data between spreadsheets. HMRC understands that it will take some time to implement a fully digital process, so it is allowing businesses an extra year to make all the links between spreadsheets and software fully digital. ●

The Loan Charge is coming

If you were once persuaded to take a loan in place of part of your pay, you may have recently received a letter from HMRC warning that you have more tax to pay.

Where you took one or more loans from your employer or employment agency, and never repaid the amount borrowed, you are now technically liable to pay a new tax called the loan charge on 5 April 2019. This taxes all the loans received by you as income in one tax year, 2018/19, which may well push some of your income into higher rate tax bands.

The loan charge won't be due if you agree with HMRC, before 5 April, to pay the tax due on the salary received as a loan. You won't have to pay all the outstanding tax in one go, as HMRC will automatically offer you an arrangement to spread the payments over up to seven years where your current annual income is less than £50,000.

However, HMRC will charge interest of 4.25% on the outstanding amount, so it will be to your benefit to pay as quickly as possible. Any Income Tax you have already paid on the benefit-in-kind in respect of a low-interest or zero-interest loan should be deducted from the loan charge tax due.

We can help you negotiate a settlement with HMRC. ●

Child Benefit tax

Families who receive Child Benefit may have that money clawed back as tax where the higher earner in the family has a total net income of £50,000 or more. The full Child Benefit must be repaid where one of the parents has a total income of £60,000 or more.

It is the responsibility of the higher earner to tell HMRC that they need to complete a tax return in order to self-assess their tax charges. Although HMRC manages claims for Child Benefit, it doesn't know which claimants have a higher earning partner.

Many parents aren't aware of the need to pay back their Child Benefit as tax. If your income rises above £50,000, HMRC don't necessarily prompt you to complete a tax return. Where HMRC discovers there is tax to pay in respect of Child Benefit, it may issue penalties to the affected parents.

HMRC has now decided to refund some parents for the penalties they were charged for failing to tell the tax office they needed to complete a tax return in order to pay the Child Benefit tax charge. To qualify for a refund of those penalties, your family must have started to receive Child Benefit before 7 January 2013. The penalties will be refunded automatically – you don't have to contact HMRC.

If you need to declare your Child Benefit to HMRC for 2016/17 or a later year, you still need to complete a tax return. If you forgot to mention Child Benefit on your tax return but you did earn over £50,000, you can amend your return or we can do this for you. ●

Choosing the benefit

If you allow your staff to pick a tax-free benefit, such as a parking space near work, a bicycle, or employer pension contributions, you would think that everyone would be happy.

But where the employees have given up some of their salary to receive the benefit, some may be taxed on the benefit provided and others won't. This is because of the tricky rules called optional remuneration arrangements (OpRA). These broadly impose tax on the employee according to the amount of salary sacrificed rather than the taxable (or non-taxable) value of the benefit.

However, there are certain exemptions from the OpRA rules, for example, employer pension contributions and bicycles provided under a cycle-to-work scheme. If the employee sacrifices salary for those tax-free benefits, they will pay less tax and NIC.

A parking space close to work is also a tax-free benefit, but it is not exempt from the OpRA rules. Where salary is sacrificed in favour of a parking space, the employee is taxed on the amount of salary given up.

The solution is not to offer a choice of salary or parking space, but instead offer the employee a basic salary plus parking space, take it or leave it. The employment contract will have to be carefully drafted to make it clear that an option was not available. ●

Preparing for Brexit

At the time of writing, the UK is on track to leave the EU on 12 April 2019, which means UK-based businesses will no longer be located in an EU country. This will have implications for paying and reclaiming VAT across the UK's borders.

EU VAT refunds

Where you paid VAT on business expenses incurred in another EU country during 2018, you would normally have until 30 September 2019 to reclaim that VAT. HMRC is urging all UK businesses to submit refund claims for EU VAT before 12 April 2019. After that date any VAT refund claims from UK businesses may have to be submitted directly to the tax authority of the country where the expense was incurred, rather than through HMRC's online portal.

VAT MOSS

Many small businesses found they could deregister from the VAT MOSS system from 1 January 2019, as their sales of digital services to customers in other EU countries fell within the new de-minimise threshold of £8,188.

However, that threshold does not apply for businesses based outside the EU, so all micro-businesses that continue to make cross-border digital sales to non-business customers in the EU will have to re-register for VAT MOSS in an EU country (i.e. not the UK) by 10 May 2019.

This also applies to businesses who remained within VAT MOSS as their annual sales are more than £8,188. Those UK businesses will have their VAT MOSS registrations automatically cancelled from 1 May 2019, and they will have to re-register for VAT MOSS purposes in an EU country by 10 May 2019. It is easiest to do this in Eire or Malta, as the forms are in English.

The VAT MOSS return and payment for the period to 31 March 2019 has to be submitted by 20 April 2019. HMRC's online VAT MOSS portal will remain open until 15 May 2019 to make and amend this return. ●

Live-in workers

Certain staff have to live on the job in order to perform their duties adequately, such as a housemaster in a boarding school. In that case the provision of that accommodation is not treated as a taxable benefit for the employee.

Other employees may be provided with a home as it is traditional for their role, such as for a gamekeeper on a country estate. In this case the employer-provided accommodation will be a taxable benefit unless both these conditions are met:

- the accommodation is provided for better performance of the employee's duties
- the employment is one of the kinds in which it is customary for employers to provide living accommodation to a particular class of employee

HMRC is reviewing all situations which rely on the customary test, to check whether the accommodation should be tax free or not. The customary test must be applied across the trade sector as a whole, not just for the specific employer alone. If less than half of employees in that type of employment are provided with living accommodation, then the perk is taxable.

If you have staff who are currently not taxed on the home they enjoy as part of their job, those arrangements should be reviewed without delay. ●

Enjoy your Entrepreneurs' Relief

When you sell some or all of the shares in your company, you should expect to pay Capital Gains Tax (CGT) on any profits you make. This tax is normally charged at 20% for higher-rate taxpayers, but Entrepreneurs' Relief can reduce the CGT payable to 10%.

To qualify for Entrepreneurs' Relief you need to be a director or employee of the company and own at least 5% of the ordinary share capital and the related voting rights. New additional conditions require the investor to have a right to either:

- at least 5% of the dividends and assets on a winding-up, or
- at least 5% of the total proceeds should 100% of the company be sold.

These conditions must be met for at least two full years ending with the date your shares are sold, or one year where the sale occurred before 6 April 2019.

When new shares are issued to new investors, this can dilute your own shareholding to below the crucial 5% threshold. Where your company issues new shares after 5 April 2019, you can make an election to protect your Entrepreneurs' Relief.

Don't forget to tell us if your company is issuing more shares or converting debt into shares, as there is a time limit for making the relevant elections. ●

Termination payments

The one fact many people think they know about termination payments is that the first £30,000 is tax free. However, it isn't any longer.

From 6 April 2018 the tax-free £30,000 cap doesn't apply in full, as the amount that the person would have been paid if they had worked their full notice period is taxable as earnings. Only the residue of a termination award, after deduction of these taxable amounts, can be covered by the £30,000 tax-free amount.

There is a complicated formula which works out what elements are treated as salary. This takes into account the individual's basic pay for the last pay period they worked, any contractual pay provided in lieu of notice, and how long the normal pay period and the notice period were.

Any statutory redundancy paid must be deducted from the tax-free capped amount of £30,000. The exemption for periods spent working overseas no longer applies.

We can help you work out the taxable element of any termination payments you need to make to your employees. ●

Claim for the right journey

It's easy to estimate your business mileage, but HMRC wants to see accurate figures recorded as close to the time of the journey as possible. There are a number of apps which can help you with this.

To achieve the precision HMRC is looking for, you need to know where your business journey starts and finishes. That is not necessarily at your home if you are self-employed.

HMRC will argue your work starts when you reach your customer's site, and any activities performed at your home-office are irrelevant. This prevents you from claiming expenses for travelling from your home to the first customer of the day, but does allow you to claim for journeys between customers.

To claim for business journeys starting from your home, you need to prove your business is truly based there. To support this argument, record the time you spend on working in your home-office, and what you were doing, e.g. contacting suppliers, or drawing up quotes.

Once you have established the number of miles which qualify as business journeys, you can claim 45p for each mile driven up to the first 10,000 miles, and 25p per mile for any additional miles in the tax year. Alternatively, you can claim a proportion of your total motoring expenses that relate to business miles, compared to the total distance you have driven in the year. ●

How to split a business

A business must register for VAT when its turnover for the last 12 months exceeds £85,000. It must also look forward and judge if its turnover in the next 30 days alone will exceed £85,000. This threshold has been frozen since 1 April 2017, and it will remain at that level until at least 1 April 2022. This means that more businesses will be drawn into the VAT net simply by increasing their prices by inflation every year.

If you don't want to register for VAT, you either have to keep your total sales low by working fewer hours, or consider splitting your business into two entities which each have a turnover of less than £85,000. Business splitting is legal but HMRC will pursue cases where they believe the split is artificial.

You can only effectively split the business if you have separate products or services which you could deliver from different legal entities. It helps if the separate products are bought by different groups of customers. For example, cleaning commercial buildings for business customers and cleaning domestic premises for non-business customers.

Step 1: Set up two legal entities to deliver your two strands of business, such as a company for the commercial cleaning, and a partnership or sole tradership for the domestic cleaning. You can effectively control both entities.

Step 2: Split the back-office support for the two businesses to ensure HMRC sees that two businesses exist in practice. You will need to set up separate bank accounts and insurance for each entity. Also purchase supplies through distinct orders in the name of each business, and make sure the correct business bank account is used to pay for the goods acquired. Bank the sales income in the correct bank account for each business.

Step 3: Split the cost of commonly used assets. If both businesses operate from the same address, set up a formal lease so that one business sublets part of the area to the other entity. Where some employees work for both businesses, the costs should be charged from the main employer to the other business.

We can help you split your business, but the costs will require continuous monitoring. ●

Check your pension forecast

You can check how much State Pension you will receive by accessing your online personal tax account. It will tell you how many years of National Insurance Contributions (NIC) you have made and if there are any gaps in your NIC record.

You need 35 full years to get the full State Pension, but will get some State Pension if you have 10 complete NIC years. You can make up gaps in your NIC record over the last six years by paying voluntary class 3 NIC at £15 per week. If you are self-employed you can pay Class 2 NIC at £3 per week, even if your profits are below the threshold where you have to pay Class 2 NIC. ●

Interest from PPI claims

There was a time when you couldn't turn on the radio, or your phone, without getting an advert for PPI (Payment Protection Insurance) refund claims. If you made a successful claim, you may have banked the money thinking it was tax free.

That is not entirely true. Each PPI settlement includes interest calculated at 8% on the refunded premiums, which is taxable. Some banks deducted 20% tax from the interest, but other lenders didn't.

The interest portion of the PPI settlement needs to be declared on your tax return for the tax year in which you received the settlement. You may have additional tax to pay on that interest if insufficient tax was deducted by the payer.

Each year HMRC receives a bulk download of data from the banks relating to PPI payments, which it attempts to match to individual taxpayers. However, the PPI data only includes a name and address, which could be years out of date, so the matching exercise is not perfect.

If you receive a letter from HMRC which mentions undeclared interest, this could relate to the PPI claim you forgot you made. Check whether you declared the interest portion of your PPI settlement on your tax return.

If you didn't declare the interest, you may need to amend a tax return for an earlier year. We can help you do this. ●

Planning for a pension

It's a sign of age when you start thinking more about your pension than your mortgage. But that's a good thing, as planning for a pension is the path to a happy retirement!

Your company can claim deductions for pension contributions made to your pension fund. However, relief can only be claimed for contributions paid within the company's accounting period. Review the level of contributions made on behalf of the directors and senior employees before the company's year end.

You also need to check how much annual allowance you have available for pension contributions by 5 April 2019. The standard allowance is £40,000, but this is reduced to £4,000 if you have already flexibly accessed benefits from a defined contribution pension scheme, even if you received those benefits in an earlier tax year.

If your income exceeds £110,000 this year, check whether the total pension contributions paid on your behalf, plus your income, will top £150,000. In this case your annual allowance is tapered down by £1 for every £2 over the £150,000 to a minimum of £10,000. We can help you with this calculation.

It is worth checking whether any highly paid individuals on your payroll have been automatically re-enrolled into the workplace pension scheme. This should happen every three years on the anniversary of the date the individual was first auto-enrolled. Even a small contribution made into the workplace pension can mean the individual's annual allowance is exceeded, which can adversely affect their long-term pension relief. ●

Land tax accelerated

Stamp Duty Land Tax (SDLT) is payable when you buy land or property in England or Northern Ireland. Buyers of property in Scotland pay Land and Buildings Transaction Tax (LBTT) and, for purchases in Wales, Land Transaction Tax (LTT) is due.

Until recently all of these taxes were payable within 30 days of the completion date, but the deadline for SDLT has been halved to 14 calendar days from 1 March 2019. This is also the period for submitting the land transaction return which reports the SDLT payable.

When a company buys a residential property for over £40,000 it must pay an additional 3% SDLT on the entire value. This supplementary rate also applies if you buy a second home. If the property is not defined as 'residential' it is a commercial property and the extra 3% tax doesn't apply.

A derelict property which is in such a poor state that it's not suitable to be lived in when purchased can't be treated as a residential property for the purposes of SDLT. If you buy a derelict home to develop, you shouldn't have to pay the additional 3% rate of SDLT on that purchase.

This 'not fit to live in' rule should also apply for purchases subject to LBTT and LTT in Scotland or Wales, as those taxes have similar supplementary rates for purchases of second homes. However, the additional rate of LBTT increased from 3% to 4% on 25 January 2019. ●

This newsletter is written for the benefit of our clients. Further advice should be obtained before any action is taken.