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Client Bulletin - August 2011

A PROGRAMME OF CHANGE

Although it has not been widely reported outside specialist financial and accountancy publications, the Coalition Government has embarked upon a wide-ranging reform of business taxation. They have, for example, recently published detailed proposals for the taxation of multinational groups, tax relief for research and development costs, and a special tax régime for profits attributable to patented inventions. These proposals all reflect the fact that, to a large extent, multinational businesses today make their profits from intellectual property rights (including, for example, the ownership of well-known 'brands'), rather than simple manufacture and trade, which makes it increasingly difficult to see where those profits arise. In the jargon, the United Kingdom must offer a competitive tax régime, or international business will make sure its profits are earned elsewhere.

Other developments are more likely to be of direct relevance to smaller businesses trading only in the United Kingdom. For example, the Government has embarked on a long-term plan to simplify payroll administration by aligning the rules for PAYE tax and employees' National Insurance contributions. Tax and National Insurance will remain two separate charges, and the link between paying contributions and entitlement to pensions and benefits will be maintained, but (for example) the rules defining earnings and benefits-in-kind will be brought into line as far as possible. The Government has stressed that there is no intention of extending National Insurance contributions 'to individuals above State Pension Age, or to pensions, savings and dividends', but it has hinted that self-employed National Insurance contributions may be increased to match those paid by employees. However, it seems inevitable that increasing self-employed contributions but leaving dividends exempt would lead to many small traders and partnerships incorporating their businesses, and thence to further IR35-style legislation, making true simplification no more within our grasp than the crock of gold at the end of the rainbow. Time will tell.

Currently, the Office of Tax Simplification, established by the Coalition Government, is 'looking at ways to improve tax administration for small business', including 'specific consideration of the issues involved in starting and growing a new business.' Their recommendations will be published alongside the Spring 2012 Budget.

FLATS ABOVE SHOPS

Legislation introduced ten years ago allows an immediate write-off of the cost of reinstating residential accommodation over shops and other business premises. This write-off can be set against income of any description.

The relief is aimed at buildings where the upper storeys were originally residential, but are now disused (or used only for storage). There are, of course, numerous conditions to be fulfilled, the most important of which is that the conversion creates one or more self-contained flats, each of which has between one and four main rooms and can be accessed without going through the business premises on the ground floor. The flat(s) must be used for short-term lets (for example, under assured shorthold tenancies) for at least seven years and there are maximum rents which can be charged.

The relief was designed to encourage the renovation of dilapidated buildings, but has been little used. Accordingly, the Government has decided to abolish it in April 2013. That leaves, of course, a window of opportunity for anyone with a suitable building for conversion, so please contact us for further details if you are interested.

INTERNET TRADING

HMRC have announced that they are targeting traders selling goods on eBay and similar online marketplaces. They say that they are using 'web robots' and other sophisticated software to identify vendors who are not declaring their profits for tax purposes.

However, it should be clearly understood that simply selling goods on eBay (or at the local car boot sale, for that matter) does not of itself amount to a taxable trade. As a rule of thumb, an individual is not trading unless he buys (or possibly makes or grows) goods with a view to reselling them.

For example, a family who simply clear out their attic or their garden shed and sell their unwanted possessions cannot be trading. Nor can the ungrateful nephew who sells the collection of ugly Victorian china ornaments he has just inherited from his great-aunt.

On the other hand, goods can be bought with a view to resale even if they are purchased by way of a retail transaction – for example, buying goods in a shop's closing-down sale in the hope of reselling them at a profit on eBay.

There is sometimes a grey area, where an amateur collector resells unwanted items. For example, a stamp collector regularly buys job lots of stamps, each of which includes a few items he wants for his own collection. The remainder he sells on. There is no hard and fast test, but it is unlikely that HMRC would argue that such an individual was trading unless he was making a regular cash profit.

Also, HMRC are on record as saying that if objects such as antiques or works of art are bought ‘for the pleasure which ownership brings’, the owner is not trading even if the purchase was made in the hope of a long-term rise in value and eventual resale at a profit (though of course capital gains tax may be in point).

If you have any doubt as to whether your own activities amount to trading, we recommend that you discuss the position with ourselves. In some cases, it may be appropriate to report the activities, but at the same time to explain why they are not considered to amount to trading.

HIGHER FINES FOR LATE RETURNS

A new, stricter, penalty régime will apply for late filed Self-Assessment Tax Returns for 2010/11 – and of course future years.

As hitherto, the starting point will be a £100 penalty if the Return is not submitted on paper by 31 October 2011, or online by 31 January 2012. However, the easement, under which the penalty was waived if all the tax was paid by 31 January, will no longer apply.

> *For example, Anne spent the whole of 2010/11 looking after her disabled daughter and has no earnings or other income to report. However, she receives a Tax Return form, which she does not send back until November 2011. She will be fined £100 (but could have avoided the penalty by filing online).*

If the Return is more than three months late (that is to say, it is not filed on paper by 31 January 2012, or online by 30 April 2012), there will be an additional penalty of £10 per day until it is filed (subject to a maximum of 90 days or £900).

> *For example, Brian just gets behind and does not file his paper Tax Return for 2010/11 until 14 March 2012. He will be fined £100 plus £10 a day for the 42 days from 1 February to 13 March (2012 being a leap year) – a total of £520. He could have avoided the daily penalty by filing online.*

If the Return is not filed within six months of the due date (that is to say, on paper by 30 April 2012, or online by 31 July 2012), there will be a further penalty of the greater of (a) £300 and (b) 5% of the tax outstanding on 31 October 2011 (if the Return is eventually filed on paper) or on 31 January 2012 (if the Return is filed online).

> *For example, Claire does file online, but unfortunately not until August 2012. She thought it wouldn’t matter as she knew she was due a repayment. However, she will be fined £100 for not filing by the due date, 90 days at £10 a day, and £300 for not filing by the six month point – a total of £1,300.*

If the Return is still not filed a year after the due date, there will be a further £300 or 5% penalty, with the possibility of penalties of up to 100% of the unpaid tax if it is found that the individual deliberately failed to submit his Return in an attempt to avoid tax.

The two points to bear in mind are that:

> *Late filing, especially where the Tax Return is more than three months late, will be significantly more expensive than in the past.*
>
> *In the majority of cases, it will be possible to reduce the penalty by filing online rather than on paper.*

Please help us to help you, by letting us have your Tax Return information as early as possible. And if you have any friends or family members who complete their own Returns, warn them that filing on paper after 31 October could be very expensive.

MAINLY FOR RETIRED PEOPLE

It is well-known that individuals aged 65 or more qualify for a higher personal allowance, but that this is progressively clawed back if their income exceeds £24,000. ‘Income’, of course, means ‘taxable income’, so an older person in the ‘clawback zone’ (£24,001 to £28,930, or possibly higher if married or aged 75 or more) may find it particularly advantageous to hold any savings in a tax-free form, such as an ISA.

Less obviously, ‘income’ for this purpose is not gross taxable income, but income after deducting certain outgoings, the most common being pension contributions and charitable donations qualifying for Gift Aid relief.

> *For example, Horace has pensions and taxable income from savings totalling £25,500. However, he makes charitable donations of £100 a month. For tax purposes, a £100 cash donation is deemed to be a gross donation of £125 less 20% income tax. Horace’s gross donations for the year are accordingly £1,500, so his income for the year is taken as (£25,500 less £1,500) £24,000 and he is entitled to the full personal allowance for the over-65s.*

Strictly speaking, it is not necessary to have receipts for the donations made, but they might be helpful and in any event the donor should keep a note of the date and amount of each gift, and of the exact name of the charity.

Deferring the State Retirement Pension

People reaching State Pension age have the option of deferring their National Insurance Retirement Pension, which buys entitlement to a higher pension later. The formula is that the pension is increased by 1% for every five weeks it is deferred, for example by 10.4% if it is deferred for a full year.

Even if someone has already begun to draw their pension, they may elect to defer it for the future. However, once they begin to draw their pension for the second time, they cannot defer it again.

The question often asked, especially by people working past State Pension age, is whether deferring their National Insurance pension is worthwhile. Basically, it is impossible to say, because it all depends on how long the pension remains payable – broadly speaking, an individual will break even if he (or she) lives for ten years after beginning to draw his (or her) pension, and make a profit if he (or she) lives for longer. It follows that a shorter deferral is more likely to show a profit than a longer one.

However, it may also be relevant that a surviving widow will generally be able to ‘inherit’ part or all of the extra pension bought by her late husband’s deferral (and a widower part or all of that bought by his late wife’s deferral).

Very comprehensive information is published in an official booklet *State Pension Deferral – Your Guide*, which can be downloaded from *www.direct.gov.uk/tpsleaflets*.

This newsletter deals with a number of topics which, it is hoped, will be of general interest to clients. However, in the space available it is impossible to mention all the points which may be relevant in individual cases, so please contact us for personal advice on your own affairs.