Summer 2014

Talking Tax

Guiding you to lifelong prosperity

Introduction

There have been many new developments in the world of tax over the last few months, resulting in a bumper Summer 2014 edition of Talking Tax.

With the World Cup in full swing in Brazil, please excuse our football puns as we explore the proposed introduction of Accelerated Payment Notices. Further investigating the new powers to be granted to HM Revenue & Customs (HMRC), we also take a look at direct recovery of debts in No Need to Send in the Heavies...

On a more cheerful note, parents will want to read our analysis of the Government's much publicised new tax free childcare scheme, whilst pension savers of all ages will be interested in the summary of pension changes.

Moving on to employers, we have included some guidance on claiming the new £2,000 Employment Allowance and as tax on company cars is set to rise further, we look at pool cars as a tax free alternative.

For a break from football related talk, company directors may be interested in reading about tax free long service awards in Fancy a New Set of Golf Clubs?

Don't worry, we haven't forgotten about VAT, you'll find a useful snippet about interest on repayments inside.

Contents:

Taking Care of Baby

The Government has certainly been shouting about its plans for tax free childcare. The new scheme is scheduled to be introduced in Autumn 2015, but what are the facts behind all the rhetoric?

The latest research from the Family and Childcare Trust suggests that annual fees for full time childcare for an under two year old now come in at a whopping £9,850. It is probably not a coincidence then that the total which can be saved for each child in a year will be £10,000 (including the maximum Government contribution).

How will it work?

Parents will be able to open a new childcare account with National Savings and Investments

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(NS&I) which they will use to save for childcare costs. You will need a separate account for each child, although you will be able to manage all of them from a single log-in. These accounts will carry no charges and the scheme will be fully digital, with the application and accounts themselves being operated online. The Government has agreed to provide 'appropriate assistance' to those who are unable to apply for and manage their accounts online.

Once the account is set up, parents can make contributions as and when they are able, and for every 80p paid in the Government will add 20p, up to an annual limit of £2,000 for every child, split into quarterly limits of £500. Care should be taken to time contributions in a way that ensures maximum top ups are applied to the account.

Employers will be able to contribute to the accounts, as will other family members, in order to maximise the relief available. Any amount contributed to an employee's childcare account on top of their salary will be subject to PAYE and Class 1 National Insurance.

Once the funds are in the account, payments will be made directly to the childcare provider. Alternatively, parents will be able to withdraw money from the account if they need to, although the 20p top ups attached to funds withdrawn will be returned to the Government and the number of free withdrawals may be limited.

Who is eligible to join?

Tax free childcare will be available to parents that live and work in the UK, members of the armed forces working overseas and those 'temporarily absent' from the UK. The definition of 'working' will include those in self-employment as well as employees. Employees will continue to be classed as working when on statutory parental leave or sick leave.

Tax free childcare will not be available to families where one or both parents are additional rate taxpayers (taxable income over £150,000) whilst those claiming tax credits or universal credit will also be excluded. Those who continue in the existing childcare voucher scheme will also be ineligible.

Lone parents must be working to claim the 20p Government top up and if you are in a couple, both of you must work. There will be a minimum income requirement for each parent, albeit just £50 a week, the equivalent of one working day on minimum wage. HMRC will check employee claims against the employer's Real Time Information (RTI) returns, and self-employed worker claims against their tax returns. To support those starting out in self-employment, HMRC will waive the £50 income limit for the first four quarters.

Which children can be claimed for?

Initially the scheme will only apply to childcare for children up to five years old and disabled children up to 17. The Government plans to extend this to include all children under 12 by the end of the first year.

The age limits are set in reference to school years i.e. you can claim for children until the first week of September after their fourth, eleventh or sixteenth birthday.

What childcare can the account be used to pay for ?

The childcare account can only be used by parents to pay for childcare that 'enables them to work'. The Government has said that it will issue clear guidance on this and check compliance in a 'proportionate' manner.

'Qualifying childcare' is broadly childcare supplied by an Ofsted registered provider and specifically excludes childcare provided by a relative of the child in the child's own home, even if that relative is Ofsted registered.

Will I be better off using childcare vouchers or the new tax free childcare scheme?

The answer is; it depends. There are many factors that will determine which scheme is best for you:

- How many children do you have?
- Did you join an employer's childcare voucher scheme before 6 April 2011, when the restrictions for higher and additional rate taxpayers were introduced?
- Do both you and your spouse or partner have access to childcare vouchers from your employers?

Below are some examples:

1) Anne and her husband are both basic rate taxpayers with two children. Only Anne has access to employer supported childcare.
2) Brian and his wife have one child. They are both basic rate taxpayers and both of their employers offer childcare vouchers.
3) Connor is a lone parent and additional rate taxpayer who joined his employer's childcare voucher scheme after 6 April 2011.
4) Diane is a lone parent and higher rate taxpayer with three children. Her employer does not offer childcare vouchers.
5) Edward and his wife are both higher rate taxpayers who joined their employers' childcare voucher schemes before 6 April 2011. They have one child.

	Tax saving available	
	Childcare vouchers	Tax free childcare
Anne	£933	£4,000
Brian	£1,866	£2,000
Connor	£620	n/a
Diane	n/a	£6,000
Edward	£2,450	£2,000

Key differences between Childcare Vouchers and Tax Free Childcare

Childcare vouchers	Tax Free Childcare
Administered by employers	No employer involvement necessary
Not available to the self-employed	The self-employed can join
Withdrawal of relief for higher and additional rate taxpayers for those joining on or after 6 April 2011	Basic rate relief only for higher rate taxpayers, additional rate taxpayers excluded
Fees generally payable to the voucher providers	NS&I will not charge any fees for the maintenance of the accounts

Vive la Pension Révolution

George Osborne announced a 'pension revolution' in the 2014 Budget, which has been welcomed by many, and would give those in defined contribution pension schemes more freedom, choice and flexibility than ever before over how they access their pension savings.

Not all of the detail is set in stone, but the proposals show a clear Government desire to give pensioners more control and responsibility in their life after work. For some this epitomises pension utopia, however more choice will further complicate the retirement equation. There are also those who are concerned about 'irresponsible' pensioners blowing their pot on Lamborghinis on retirement and having nothing left.

Changes already in effect

Changes to pension drawdowns

Although consultation is happening over the course of the year, the Chancellor wanted to offer pensioners an immediate boost with two changes to income drawdown rules being effective from 27 March 2014:

1) Capped income drawdown limit increased by 25%

   Previously, you could only withdraw 120% of the Government Actuary's Department (GAD) basic amount each year from a capped drawdown pension fund, which is based on annuity rates (the tables are available on HMRC's website). For pension years starting after 26 March 2014, you will now be able to withdraw 150% per annum.

2) Minimum income requirement for flexible drawdown cut

   The annual secured income needed to meet the minimum income requirement to access flexible drawdown has been cut from £20,000 to £12,000, for those applying to start flexible drawdown from 27 March 2014.

These changes give pension drawdown users more flexibility to increase or decrease income to adapt to changing circumstances.

Changes to the pension triviality rules

The Chancellor announced changes to improve choice for those with small pension pots, who may otherwise have been forced to receive minimal regular pensions for life, with limited ability to shop around for the best annuity.

Firstly, the triviality limit has been increased to £30,000 from just £18,000. This means that those with total pension savings up to £30,000 or less can take the whole lot as a lump sum, known as a trivial commutation lump sum.

The Chancellor also announced a relaxation of the stranded pot rules. A stranded pot is one which is too small to buy a pension, but that the holder cannot take as a lump sum through the trivial commutation rules as they have other, larger pension pots taking them over the triviality limit.

Previously, stranded pots of less than £2,000 could be taken as a lump sum. This has now been increased to £10,000 from 27 March 2014. In addition, the Chancellor has increased the number of stranded pension pots that can be taken as a lump sum from two to three.

Changes under consultation

Allowing the breaking of pension pots

The Government is consulting on allowing those who are currently only able to take a 25% lump sum from their pension to take more. The 25% will remain tax free with the excess taxed at the individual's marginal rate of income tax.

Changes to the 55% tax charge on lump sum death benefits

Further to the drawdown changes already in effect, the Chancellor announced a consultation on the 55% tax charge on drawdown lump sum death benefits.

The Government has plans to cut the rate of tax payable on drawdown death benefits from April 2015 to make it more closely aligned to income tax charges on drawdown. The Government has realised that having a higher rate of tax on death, than on the withdrawing of income, penalises pension savers for only taking what they need from their pension funds.

Changes to the age cap on pension contributions

As we are all painfully aware, pension ages are on the up! The state pension age is increasing to 67 in 2028, and the earliest age that you can take retirement benefits is set to increase with it to 57.

As pension ages increase and we all work for longer, the Government is consulting on removing the age cap for making pension contributions. Currently those aged over 75 are unable to make tax relievable pension contributions. The new proposals may see this cap removed.

This is the biggest shake up to UK pensions ever! If you would like more details of how your pension choices may be affected, please get in touch with your usual Hazlewoods contact.

When is a Pool Car not a Pool Car?

As the tax on company cars has increased, their popularity has waned, with fewer employers offering them to staff. The rates have already been announced up to and including 2016/17 and it isn't good news, with the percentage used in the benefit in kind calculation increasing by 1% each year.

The benefit in kind for 2016/17 on a car with CO_2 emissions of 130g/km will be 23% of its list price. For a £15,000 car provided to a higher rate taxpayer, this will result in a tax charge of £1,380, compared to £900 just five years ago.

Businesses have been looking to alternatives and many have decided to operate a pool car system that does not give rise to a benefit in kind. However, sometimes the car a company refers to as its 'pool' car does not qualify as one for the purpose of tax legislation.

To qualify as a pool car the vehicle must meet several conditions, the first of which is that it is available to, and used by, more than one employee. It is, therefore, not enough to just state that a car can be used by all the employees if, in reality, only one ever does.

Furthermore, one employee cannot use it to the exclusion of the others. For example, if three employees have access to a car and one employee uses the car every day, whilst the other two employees only use it when the first employee is on holiday, the car may not be deemed a true pool car.

It must also be used 'by reason of the employee's employment', i.e. for business purposes and any private use by an employee must be 'merely incidental' to the employee's business use of it. HMRC regard this as a qualitative statement, that the phrase 'merely incidental' does not refer to private mileage compared to business mileage, but the private element of a journey as a whole. For example, they state that an employee who takes the car home in the evening in order to allow an early start on a long business journey the following day would pass the 'merely incidental' test (so long as this does not become a regular occurrence).

We would advise that a clause should be included in the relevant employees' contracts stating that there must be no private use of the pool car, stating disciplinary consequences for any deviation from this policy. This would strengthen the employer's position should HMRC challenge the vehicle's pool car status.

The car must also not normally be kept overnight in the vicinity of the employees' homes. Here, a rule of thumb is that the car is deemed to be normally kept overnight if it is at an employee's house for 60% of the nights in the year.

If the car fails one of the conditions it is not a pool car and a benefit will arise, possibly on more than one employee. For further details, please get in touch with a member of the Tax Department.

Auto-Enrolment: A Potential Issue to Avoid

There is a potential planning pitfall in relation to Auto-Enrolment that we wanted to share so that no one gets caught out!

If an employer has at least one "worker", regardless of whether that "worker" is eligible, the employer will have to register with the Pensions Regulator and apply the relevant Auto-Enrolment safeguards etc.

For Auto-Enrolment purposes an office holder, such as a director or company secretary, is not a "worker". This means that companies with only a director (without an employment contract) do not need to do anything about Auto-Enrolment.

There are many companies where the director's spouse is also an employee. Where this spouse is an office holder, as above, the company will still be in the clear when it comes to Auto-Enrolment. If, instead, the spouse is an employee this will force the company into Auto-Enrolment procedures.

Now it would appear that a nice quick fix would be to make the spouse an office holder. However, this would not work as where a person is an employee they are deemed to have an employment contract under employment law, regardless of any actual contract in place. When that person is then made an office holder, they would take that deemed employment contract with them. This would mean that they would remain a "worker" and therefore Auto-Enrolment will still apply to the company.

To avoid this, the spouse employee would need to resign as an employee and then be made an office holder after their resignation. It is our opinion that ensuring this is done in advance of the company's staging date should remove the company from the obligation of administering a pension scheme.

A Gift From Dave: The Employment Allowance

In April, David Cameron wrote to nearly two million small businesses and charities, presumably to invite them to check their eligibility to claim the £2,000 Employment Allowance.

In his letter, he explained that 'simplicity has been the priority in designing the allowance' and, as is often the case, the Government's definition of simple is slightly different to ours.

The mechanics for claiming the allowance are indeed quite simple, using either HMRC's Basic PAYE Tools or your own payroll software. However, working out whether your business is eligible takes a bit more thought.

The Employment Allowance is a new annual £2,000 reduction in Class 1 Employer's National Insurance (NI) contributions, available from 6 April 2014. You cannot claim it against Class 1 Employee contributions or other classes of NI such as Class1A which is payable on benefits in kind. However, there is a planning opportunity for companies where the only employees are the shareholders/directors, which we explore later in this article.

Who is eligible?

Businesses completing functions either wholly or mainly (i.e. more than 50%) of a 'public nature' are not able to claim the Employment Allowance.

The business's activities are deemed to be of a public nature if the contract is directly with a public body. Some examples include care provision on behalf of a local authority, GP and other NHS services, refuse collection for local councils, debt collection for Government departments and running 'meals on wheels' services for local councils.

HMRC have advised that there are three methods of calculating the proportion of 'public nature' activities. The business can choose which to use, but it must be consistent. The three methods are:

1. The number of employees working on functions of a public nature as a percentage of the total number of employees.
2. The time worked on the functions of a public nature compared to the total working time of the business.
3. The percentage of turnover generated from the functions of a public nature.

Employers that employ personal or domestic staff, such as nannies, chauffeurs, gardeners and personal care support workers, are also ineligible for the allowance.

In the case of connected businesses, or businesses with more than one PAYE scheme, only one can claim the allowance, but it is up to you to decide which.

Companies are considered connected if one company has control over the other, or both companies are under the common control of the same individuals or companies.

How do I claim it?

You can claim the allowance using your payroll software or HMRC's Basic PAYE Tools. You must then reduce your Class 1 Employer's NI payment by up to £2,000. If, in the first month, you do not have a sufficient Class 1 Employer's liability to claim the whole £2,000, the excess is carried forward.

Example:

Your monthly Class 1 Employer's liability is £700.

Month 1: You claim £700 and carry forward £1,300 unused Employment Allowance.

Month 2: You claim £700 and carry forward £600.

Month 3: You claim the balance of £600, leaving £100 Employer's contrbutions payable.

Once you have made a claim, HMRC will automatically carry forward the claim each tax year.

A planning opportunity

There is a planning opportunity where the only employees are the director/shareholders (and spouses) and they have previously been receiving salaries equal to the Class 1 Primary threshold, so that no tax or NI is incurred.

The salaries could now be increased to the personal allowance, which is £10,000 for 2014/15. This will result in some Class 1 Employee's and Employer's NI becoming due.

The company would then be able to claim the Employment Allowance against the Employer's liability, leaving only the Employee's contributions of approximately £245 per director for the year, payable to HMRC.

However, after the corporation tax savings on the additional salary are taken into account, there would be an overall tax saving of over £100 per director. If the company has more than eight directors, the Employment Allowance would be used up and the savings reduced.

As the savings are small you may decide that its not worth changing the salary strategy, but it's something to consider!

If there are other employees in the business and the £2,000 can be allocated against Employer's NI already being paid, we would not advise increasing the directors' salaries.

If you are not sure whether your business qualifies for the Employment Allowance, get in touch with your usual Hazlewoods contact for further details.

Fancy a New Set of Golf Clubs?

Have you been a director of your company for more than 20 years? You may be able to have a gift from your company, tax free!

It is possible to reward an employee with at least 20 years of service with a tax free gift up to the value of £50 per year of service (i.e. £1,000 for 20 years). The gift will not only be tax free in the employee's hands, but tax deductible for the company, provided certain conditions are met.

There is no exclusion for directors in the legislation, although it would be sensible to ensure that a small salary is in place, otherwise it may be difficult to argue employment status.

If you were a sole trader or partnership before incorporating the business into a company, you cannot include the length of time before you became a company director when calculating your years of service.

Conditions

- The gift can be up to the value of £50 per year of service.
- The length of service must be at least 20 years
- The gift cannot be cash or cash convertible (such as some vouchers).
- The employee must not have received an award for length of service in the ten years preceding the gift.

If all of the above apply to you it may be time for that new set of golf clubs, watch (although perhaps not a Rolex) or flat screen TV!

Call a member of the tax team for more details.

A Snippet From the World of VAT...

In the case involving Littlewoods Retail Limited, the European Court has ruled that, where a taxpayer has overpaid VAT as a result of an HMRC error, the interest paid by HMRC must adequately compensate the taxpayer for the loss of the use of that money. This result is unlikely to be achieved by HMRC's normal simple interest calculation.

Armed with this guidance, the High Court has agreed with Littlewoods that the amount of interest paid by HMRC fails to adequately compensate the company to the tune of some £800million! Whilst the circumstances of the Littlewoods claim may be "exceptional", the principles on which the High Court has reached its decision do not seem to be, despite HMRC contesting that the ruling does not establish any general basis which could be applied to other similar cases.

Any business which has received a VAT repayment from HMRC, to which interest has been added, would be well advised to revisit the matter and consider the possibility of filing a supplementary claim for further interest.

Moving Online: Employment Related Securities

From 2014/15 all annual returns for employment related securities must be submitted online, including non-tax advantaged schemes currently reported on Form 42.

The online submission must include an attachment containing the supporting information and HMRC have provided templates for these on their website. You can use the attachment throughout the year to gather the supporting information. To avoid penalties and keep any tax advantages relating to the scheme, returns must be made online by 6 July following the end of the tax year.

The scheme or arrangement must have been registered on the HMRC Employment Related Securities (ERS) Online Service first. For tax advantaged schemes, the online registration process includes self certification.

HMRC have provided templates for the supporting information attachments on their website and advise taxpayers to use them. If you want to build your own attachment it must have the same name and follow the same structure as the relevant HMRC template.

HMRC state that they will reject attachments submitted in a format other than ".ods" or structured in a different way to the templates. If an attachment is initially accepted but is later rejected for being in the wrong format, containing incorrect information or not containing all of the information, you may have to pay penalties.

In addition EMI options granted on or after 6 April 2014 are also notifiable electronically.

Accelerated Payment Notices: The Final Whistle for Tax Avoidance Schemes?

As this edition lands on your desk the World Cup will be well under way in Brazil, although whether the England team will still be there is anyone's guess! Meanwhile, an altogether different struggle is playing out between the accountancy and tax profession and HMRC.

In his March Budget speech, George Osborne confirmed his plans to change the familiar arrangement whereby tax is due after the event and when it has been agreed between the taxpayer and HMRC. We were introduced to the concept of accelerated payments of tax where taxpayers have used tax avoidance schemes covered by the DoTAS (Disclosure of Tax Avoidance Schemes) rules or counteracted under the new GAAR (General Anti-Abuse Rule) or where a judicial decision in a similar case has been found in HMRC's favour.

The controversial proposals state that the rules will be changed retrospectively so that if you have an open appeal or enquiry at the date the 2014 Finance Bill receives Royal Assent (expected in mid July), HMRC will be able to issue a Notice to Pay.

Once you have received a Notice to Pay, you will have 90 days to pay up (or it will go to penalties, as it does so often for the England football team). You can make 'representations' to HMRC to request them to reconsider the Notice which would defer the payment by an additional 30 days, however there is no right of appeal. Given that in recent years most legal changes have been to increase the rights of the individual, the removal of a right of appeal which effectively leaves HMRC in a position of judge, jury and executioner is a curious departure.

These proposals have met widespread condemnation from the accountancy and tax profession, with even the Treasury Select Committee stating that the proposals are in direct contravention to the principle that the Government should only use retrospection in "wholly exceptional circumstances" and, as yet, it has not been explained what is "wholly exceptional" in this case.

The undermining of certainty is the key issue with applying retrospection to taxation, and the Treasury Select Committee believes that the Accelerated Payment Notices could be the start of a slippery slope.

So far the Government has ignored calls to amend the legislation, including the suggestion of a 'sunset clause' which would limit the life of the provisions and Royal Assent is due to be granted within the next few weeks. However, we feel that there may be legal challenges ahead.

These measures have effectively removed any tax cash flow benefits of undertaking avoidance schemes. With the seemingly constant stream of celebrities being condemned in the media for their avoidance, we think that this may be the coup de grâce for the Tax Avoidance Industry; there's certainly no sign of extra time.

No Need to Send in the Heavies...

... soon HMRC will be able to take what they want straight from taxpayers' accounts.

The Budget announced that HMRC's debt collection powers are to be increased, allowing them to seize cash from the bank and building society accounts (including ISAs) of taxpayers.

The Direct Recovery of Debts will apply to those who owe over £1,000 in tax or tax credit debts and have been contacted 'multiple' times to pay. A minimum aggregate balance of £5,000 will be left across the taxpayer's accounts after the debt has been recovered.

The Government states that this will modernise the recovery process and bring it in line with other tax authorities, including France and the US, and aims to legislate for these changes in the Finance Act 2015.

The Treasury Select Committee has advised that they find the proposals 'very concerning' and make the point that 'People should pay the right amount of tax, but HMRC does not always ask for the right amount.' This is definitely the case in our experience, from HMRC not allocating payments to not updating their files for an address change.

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Assistance with tax investigations
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