Talking Tax

DRIVING LIFELONG PROSPERITY

Winter 2016

SPOTLIGHT ON THE AUTUMN STATEMENT

Welcome...

In this issue we provide an overview of the main Autumn Statement announcements, the latest on the new deemed domiciled rules, proposals for 'Making Tax Digital' and some developments in the world of VAT.

We also look at a pitfall for employers to be aware of when providing childcare vouchers to their employees and highlight action to be taken following changes to the death in benefit rules for pensions.

INSIDE

HAZLEWOODS
DRIVING LIFELONG PROSPERITY

PETROL DUTY

Freeze on increase in petrol duty for 7th successive year at 57.95p per litre.

CORPORATION TAX

Corporation tax will be lowered to 19% from April 2017 and 17% from April 2020.

SALARY SACRIFICE TAX BENEFITS

Individuals will pay the same amount of tax as if they were buying the benefits from their post-tax income. This will not apply to employer pension contributions, pension advice, employer-supported childcare, workplace nurseries, low emission cars and the cycle to work scheme.

EMPLOYEE SHAREHOLDER STATUS

Abolition of the Employee Shareholder Status, with effect from 1 December 2016.

NATIONAL PRODUCTIVITY INVESTMENT FUND

£23 billion is being ring-fenced for a new National Productivity Investment Fund, to be used in areas considered critical for productivity; housing, research & development and economic infrastructure.

ATTACKS ON AVOIDANCE SCHEMES

Advisers will face significant penalties if they implement or introduce avoidance schemes defeated by HMRC in the courts.

NATIONAL INSURANCE THRESHOLDS

The thresholds at which employers and employees pay national insurance will be aligned from April 2017.

PERSONAL TAX THRESHOLDS

The personal allowance will rise to £12,500 and the higher rate threshold to £50,000 by 2020.

Non-domicile changes

In our Winter 2015 Talking Tax we covered the proposed changes to the non-domicile rules as announced as part of the Summer Budget 2015. One year on, and with the changes set to come in from April 2017, we look at the latest proposals and potential implications for non-domiciled, but UK resident, individuals.

DEEMED DOMICILE STATUS

From April 2017, non-doms who have been UK resident for 15 out of the last 20 years will be treated as deemed domiciled for all UK tax purposes.

Currently, non-doms are deemed domicile for inheritance tax (IHT) purposes once they have been UK resident for 17 out of the last 20 years, therefore, under the new rules will be subject to IHT two years earlier. In addition, non-doms will also be treated as deemed domiciled for UK income tax and capital gains tax purposes under the new rules. They will also no longer have access to the remittance basis and the recently introduced £90,000 remittance charge will become redundant.

For IHT purposes, the deemed domicile status is lost after the individual has been non-UK resident for four consecutive years. However, if they become UK resident in year five or six they will automatically become deemed domiciled again. If they return more than six years later, the clock effectively restarts and they can be UK resident for up to 15 out of 20 years again, before being deemed UK domiciled once more.

This is not the case, however, for individuals who were born in the UK with a UK domicile of origin but a domicile of choice elsewhere. They will be treated as deemed domiciled in the UK, broadly, from the point they become resident in the UK again.

REBASING OF ASSETS

The government has confirmed that it will be possible to rebase the cost of foreign assets to their market value at the date the new rules take effect i.e. 6 April 2017 to limit the impact of the new rules.

Rebasing will, however, only be available to those UK resident non-doms who have paid the remittance basis charge at least once since 2008. For individuals who have not previously paid the remittance basis charge but will be deemed domiciled from April 2017, it might be worth considering paying for 2016-17 if the foreign assets owned have significant potential gains.

In addition, any individuals who become deemed domiciled on or after 6 April 2017 will not be able to rebase their assets. It also appears that rebasing will only be possible where the asset was personally owned by the non-dom at the time of the original announcement of the rules i.e. 8 July 2015. This is to prevent people from transferring assets from companies or trusts to themselves directly in advance of April 2017.

MIXED FUNDS

The government has also announced that non-doms will have a one year grace period running to 5 April 2018 to separate out any mixed overseas funds.

Any income and gains that arose prior to 6 April 2017, or before the individual became deemed domiciled, can continue to be taxed on the remittance basis. Therefore, splitting funds in an offshore bank account into separate accounts between overseas income, gains and tax-free or 'clean' capital, could enable more tax efficient future remittance.

Once again, however, this window of opportunity will not be available to those born in the UK, with a UK domicile of origin but a domicile of choice elsewhere.

PLANNING OPPORTUNITIES

There are a number of opportunities which could help to minimise the impact of the new rules, but upfront planning will be key. For example, considering whether rebasing could apply and cleaning up historic mixed funds. In addition, offshore structures and trusts could be considered to shelter some IHT implications. Please get in touch with your usual tax contact if you would like to find out more about how the new rules could affect you.

Making Tax Digital

HMRC released six consultations on its 'Making Tax Digital' strategy in the summer. These set out their proposals for the implementation of digital tax accounts and the quarterly reporting requirement. The new rules will be introduced for income tax and national insurance contributions from 2018, VAT from 2019 and corporation tax from 2020.

The consultations, when combined, ran into hundreds of pages but we have summarised some of the key proposals below.

EXEMPTIONS

- Three million smaller businesses will not be required to update HMRC quarterly or report digitally. HMRC had already announced that employees or pensioners with secondary income of less than £10,000 would not be subject to the digital reporting. They have now extended this to all unincorporated businesses and landlords with a turnover of less than £10,000 per annum.
- Those who cannot engage digitally (e.g. for practical or religious reasons) will not be required to maintain digital records or make quarterly reports.
- Charities and Community Amateur Sports Clubs (CASCs) are likely to be exempt.

ADMINISTRATION

- Businesses will have one month after the end of each quarter to submit their quarterly update, which consists of turnover and total costs, from which HMRC will provide an estimate of tax to date that can be paid 'voluntarily'.
- An 'End of Year' declaration will be required after the four quarterly updates to confirm the final position for the year and to claim any reliefs or allowances. It is proposed that the deadline for this will be nine months following the period of account of the business, rather than the current 31 January deadline that applies to individuals and unincorporated businesses.
- Small unincorporated businesses above the £10,000 exemption threshold may be given a one-year deferral before being subject to the 'Making Tax Digital' requirements but there is no indication as to what the upper turnover threshold will be as yet.
- Compatible software with HMRC's digital accounts will be required to make quarterly updates. HMRC have confirmed that they will not be providing their own free software but that other providers will.
- Partnerships will have the opportunity to nominate a partner to submit the quarterly updates. This will then feed into each individual partner's digital tax account, rather than each partner having to update and maintain their own records separately.
- Cash basis accounting will be extended to more businesses so that tax is only paid based on cash received rather than invoices issued. The threshold to apply the cash basis is currently where turnover is below the VAT threshold (£83,000 for 2016/17). The proposals look at extending this to a maximum of double the current level i.e. £166,000 and to most unincorporated property businesses.

ENQUIRIES

HMRC will not be able to enquire into the quarterly updates, but will be able to under the 'End of Year' declaration in the same way and subject to the same timeframes, as with the existing annual tax returns.

TAX PAYMENTS

It will be possible to make voluntary 'pay as you go' tax payments throughout the year towards your tax liability. The current mandatory payment deadlines will remain as they are for now, although it would not be surprising if this moves closer towards real time once the new rules have bedded in.

PENALTIES

Penalties will be charged for late submission based on a 'points' system. Each late submission will incur 'points' and, once a certain level is reached, a penalty will be applied for that and future failures. With essentially five reporting obligations a year for income tax alone, along with the points system being adopted for other reporting obligations such as VAT, this could have the potential to lead to substantial penalties.

CONCERNS

'Making Tax Digital' brings about possibly the biggest change in tax filings since the introduction of self-assessment some 20 years ago. There are a number of concerns around the proposals, particularly how quickly the government is trying to implement the changes which will leave little time to listen to and address issues raised by stakeholders.

We are extremely conscious of the potential impact of these new reporting requirements for our clients and, as a result, Hazlewoods has responded to the main consultation documents released in the summer. A high level summary of some of the points raised as part of our response includes:

- The transition issues from spreadsheets/paper records to software packages for smaller businesses, taking away individual choice and mandating how people need to report, along with the cost impact of doing so.
- The likely inaccuracy of tax estimates provided by HMRC each quarter on the basis of the information submitted.
- Moving from one annual deadline to five and the impact this will have for both taxpayers and agents in terms of costs and administration.
- The short timescale to turnaround the quarterly reports.
- The impracticalities of submitting the 'End of Year' declaration for a taxpayer with certain accounting periods such as 30 April. In this case, the deadline would be the following 31 January; however, as this would still be during the fiscal year, it would not be possible to accurately reflect additional income such as interest and dividends at the point of the filing deadline.
- The £10,000 annual income threshold proposed to exempt taxpayers from the reporting requirements seems extremely low and that aligning to the VAT threshold could be more appropriate.
- The confusion and complexities caused by allowing voluntary payments to the payment history on the clients account and ensuring payments are allocated correctly.

WHAT'S NEXT?

With some significant gaps in the detail and a number of unanswered questions, time is running out to finalise the details. The consultations closed on 7 November 2016 and we can now only wait and see if HMRC listen to the concerns of taxpayers, agents and professionals on the proposed plans.

CHILDCARE VOUCHERS – EMPLOYER'S ANNUAL ASSESSMENT

Childcare vouchers are a government scheme operated through employers, allowing you to pay for childcare from your pre-tax salary. The income tax and national insurance contribution (NIC) savings available to the employee and the employer could, however, be deemed invalid if the strict record keeping requirements set by HMRC are not met.

THE BASICS

In most cases, employers offer childcare vouchers under a 'salary sacrifice' arrangement whereby the employee gives up a set amount of their gross salary in return for childcare vouchers to the same value. The benefit to the employee is that they will not pay income tax or NIC on the vouchers and, similarly, the employer will save on NIC.

The maximum amount of vouchers that can be bought tax and NIC free each month depends on the tax status of the employee. For example, a basic rate taxpayer can currently purchase up to £243 of vouchers, whilst a higher rate taxpayer can buy up to £124 per month and an additional rate taxpayer up to £110 per month.

ANNUAL BASIC EARNINGS ASSESSMENT

When an employee joins a childcare voucher scheme, the employer is required to carry out a 'basic earnings assessment' to determine their maximum voucher entitlement.

HMRC requires employers to keep a record of their earnings assessments, which must be undertaken on joining the scheme and annually thereafter for all employees who joined a scheme after 6 April 2011.

Employment income amount includes:

- basic pay per the employee's contract;
- contractual or guaranteed bonuses;
- regional and shift allowances; and
- taxable benefits.

Employment income amount excludes:

- performance related or discretional bonuses;
- overtime payments (as long as not guaranteed);
- benefits that are exempt from tax, such as pension contributions and payroll charitable donations; and
- an amount equal to the basic personal allowance.

WHAT HAPPENS IF THE ANNUAL ASSESSMENT IS NOT CARRIED OUT?

If an annual assessment is not made, the claim can be deemed invalid by HMRC and childcare vouchers treated as a taxable benefit. This is the case even if the amount of vouchers provided to the employee is the correct entitlement.

ACTION TO TAKE

As the employer, you will need to keep records to show how you have calculated the employment income amount for each employee receiving vouchers. Some of the bigger childcare voucher companies offer access to online portals to help record and maintain this information, but we are aware that some clients may not know of this ongoing requirement.

As long as it was based on the best available information at the time it will be valid for 12 months. So, if any of your employees receive salary increases during the year, any change to their entitlement to tax and NIC free vouchers will only take effect from the start of the following tax year.

PENSION DEATH BENEFITS

The past couple of years have seen one of the largest shake-ups the pensions industry has ever seen. Further reductions in the amount that higher earners can contribute to pensions, and greater flexibility on how members can take their retirement benefits stole the majority of the headlines; however, some of the most important changes came in respect of pension death benefits.

Under the changes, pensions can now be used as a very effective way of passing on family wealth to future generations. Depending on when the death of the pension holder occurs, beneficiaries can potentially be provided with a tax free lump sum or a tax free income. Please see further details below:

Death before age 75 – Should the pension member die holding benefits before the age of 75, then all benefits (within the Lifetime Allowance) will be paid out income tax free, whether they are provided as a lump sum, or as a beneficiaries' pension, providing they are nominated to a beneficiary within two years of the pension member's death.

Death after age 75 – Should the pension member die holding benefits after the age of 75, then all benefits paid out from the pension, whether this be through a lump sum or as a beneficiaries' pension, will be subject to income tax at the beneficiaries' marginal rate, once again providing the benefits are nominated within two years of the member's death.

EXPRESSION OF WISHES

Given these changes, it is vital that your Expression of Wishes form is completed correctly. The failure to mention certain desired beneficiaries, or the wrong wording used, can not only have a huge impact on who receives your pension on your death, but also how much is received and when. An incorrectly completed Expression of Wishes form can easily result in significant, avoidable and unnecessary income tax.

EXAMPLE

A pension scheme member dies at the age of 80, with a pension fund of £100,000. The member does not have an Expression of Wishes form in place, and is a widower with one son, aged 50. Having reviewed the member's circumstances and objectives, the pension scheme trustees decide that benefits should be paid to his son. As there is no Expression of Wishes form in place, the trustees, unfortunately, cannot provide his son with a beneficiary's pension and therefore, have to pay out the benefits as a lump sum.

As the pension member was over 75 when death occurred, this lump sum would be taxed at the beneficiary's marginal rate of income tax. Given the pension fund value, this will suffer 40% income tax on at least part of the payment, potentially higher, depending on the other income his son receives.

SUMMARY

It is likely that older Expression of Wishes forms may no longer be suitable for the new rules, so it is important these are reviewed to ensure you have completed the most up to date copy available. The majority of pension providers have redesigned their Expression of Wishes form in accordance with these new rules.

Please get in touch on 01242 682141 to speak to a member of our Financial Planning Team about the new pension death rules in more detail and how you can ensure your pensions are paid to your beneficiaries efficiently on your death.

TAX PRIZES AND VIDEOS

TAX INFORMATION PLEA AND OUR PRIZE WINNER

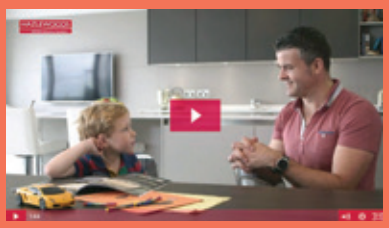
Thank you to everyone who has submitted their personal tax return information for 2015-16. The 31 January deadline is fast approaching so, if you haven't already, please make sure that you send in your information as soon as possible so that our tax staff can still have a break over Christmas and enjoy their turkey dinner!

Our prize draw has now taken place for those who submitted their information prior to 30 September and we are pleased to announce that the winner was Amanda Thompson. The prize this year was a one night stay in a 5-star hotel in London for two, including top price tickets for a West End show of their choice.

TAKE 2 – TAX VIDEO

The second tax video in our series following the Woods family has now been released. In our latest video, Sam Woods convinces his uncle that he might be able to afford a more expensive car than he was planning on buying if he gets advice from Hazlewoods on the disposal of shares in his business. To view this and our first video on Employee Share Schemes take a look on our website:

www.hazlewoods.co.uk/ervideo



EMPLOYMENT POSITION UBER ALLES?

Most of us are aware of Uber, even if we've never used it – submit a trip request via your smartphone to Uber and then, as if by magic, your driver and car arrive ready to whisk you away. Seems a clever, if simple, system, but the nature of that supply contract was recently challenged in an employment tribunal; was the driver a self-employed contractor or an employee of Uber itself?

The tribunal confirmed that Uber is actually an employer of those drivers, conferring upon them rights to sick leave, holiday pay and all those things employees benefit from. Naturally it also has a significant effect on Uber's PAYE and direct tax obligations; but it can't affect the VAT position surely?

In fact it does, and in a material way. Before the tribunal decision, Uber viewed each of those drivers as self-employed, and that meant that the actual contractual position for each trip was between the driver and passenger and so, the responsibility for VAT was also with the driver. On this basis Uber didn't need to concern itself with VAT matters, and unless the driver individually breached the VAT registration threshold, currently set at £83,000, then they didn't either.

Put succinctly, this ruling means that Uber is actually acting as, what is referred to as, a principal. Drivers working solely for Uber will cease to be able to be VAT registered in their own right which will remove the ability from drivers using their own vehicles to recover the VAT on the running costs. This will be the case for the past four years, meaning potentially a number of cancelled registrations and the requirement for adjustments to be made; HMRC has remained quiet on the likelihood of penalties and interest charges on these adjustments.

Given many other tax jurisdictions globally, including Australia and Finland, have confirmed they believe that it is the driver who has the responsibility to account for VAT, this decision turns Uber's business model on its head in the UK, and it is entirely expected that Uber will appeal the decision. So what is the issue here for Uber? In not recognising the reality (in the tribunal's view) of its situation, it has left itself open to a potential VAT nightmare, in that it will be required to charge VAT on the taxi rides thus far supplied and supply customers with VAT invoices. Although, the fact that it is Uber BV in the Netherlands, which is the supplying entity, has the potential for business users to be required to reverse charge VAT and self-account, taking some of the impact away from Uber itself.

However, these reverse charges may then give rise to further registration requirements for customers in the vein of Google AdWords, as we mentioned in the last issue!

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