Autumn 2015

Talking Tax

Guiding you to lifelong prosperity

Welcome

2015 is set to be a busy year for tax changes with two Budgets already and the Autumn Statement expected in a few months' time.

In this autumn edition we take a look at the key announcements from the Summer Budget, examine in detail a couple of announcements from the March Budget and contemplate a few recent experiences which may have caught the unwary out.

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Digital future

With the Conservatives taking a majority government in the 2015 election, it appears that they may now have to carry out their promise of scrapping the tax return, as we know it, and move to digital accounts.

This was a surprise announcement in the March Budget with a glossy document published explaining (or not as the case may be) how they intend to digitalise tax returns by 2020 for all.

Some cynics may think that this was a last ditch attempt to curry favour with the voting public by suggesting that tax would all of a sudden become a simple exercise, where HMRC do all of the hard work. However, in reality, this is very unlikely to be the true picture.

What we know so far

In short, very little! HMRC are likely to publish further information later in the year but for now we just have the short glossy to peruse. We have pulled out some of the statements included within that document and provided our thoughts on what this could mean (see table on page 2).

What remains to be seen?

A lot! There are still a number of questions to be answered as to how the new digital accounts will operate in practice and a lot more information is needed. Some of the key questions we are yet to have answers to include:

- How frequently will information need to be uploaded/checked/confirmed on the digital accounts?
- Will there be penalties if taxpayers approve data which HMRC have inputted in error?
- Will there still be a deadline date?
- How will HMRC be able to provide confidence that errors on their side will be minimised?

The last point is of particular interest as, unfortunately, it is not only on a rare occasion

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where HMRC make an error or pick up the wrong bit of information (see our following article for some examples). Therefore, placing more confidence in the databases HMRC have access to and using this information to calculate an individual's tax liability may well leave many taxpayers shaking in their boots!

The upsides

Recent statistics show that 16% of those filing tax returns for 2013/14 had no tax to pay (i.e. filed nil tax returns) with a further 8% owing £50 or less. This equates to nearly a quarter of the 11 million people now filing tax returns owing very little, or nothing, in tax.

A shift to digital tax accounts may benefit many of those individuals with simple tax affairs as, rather than form filling, they will just be required to verify HMRC's data. We do wonder though, if HMRC have got the information wrong, will the taxpayer be penalised?

Also, having sight of all the different tax liabilities in one place rather than having to login to several different portals should make life a bit easier.

A number of other upsides have been promised but only time will tell as to whether these will be achieved in reality. In the meantime, we wait with bated breath, albeit as you might have gathered a little bit sceptically, to see more details on how this big change is going to be achieved!

What HMRC have said	Our interpretation
They will bring together each taxpayer's details in one place, just like an online bank account... without having to complete a tax return again.	Ok, so maybe the tax return as we know it will no longer need to be completed but information will still need to be checked, missing information provided and all presumably by a set deadline...
Individuals and small businesses will have the option to 'pay as you go' to help manage their cashflow.	Surely this is more likely to help HMRC's cashflow by encouraging taxpayers to spread their payments and hence pay part or all of their tax liabilities sooner...
By 2020, businesses will be able to manage their taxes together as part of their day-to-day running.	Could this be an indication that HMRC are moving towards more of a real time information approach as recently adopted for PAYE? If so, this could actually lead to added complexity and compliance. It would be a welcome move though to have all tax liabilities shown in one place.
HMRC will automatically use the information it holds, along with new data from third parties, to populate the digital accounts.	The taxpayer will still need to check the information is correct. Errors are inevitably going to happen, particularly as information will be gathered from a range of sources including third party information.
They won't need to provide information that HMRC already holds, and they will be able to see and understand their tax liability.	"Understand their tax liability". Really? Unless they are also planning a complete overhaul of the tax system, the same complex rules are still going to be in place.
Taxpayers can let an agent manage their digital tax account on their behalf.	The digital approach is unlikely to be quite as straightforward as being suggested and even HMRC have recognised that support will need to be provided by tax professionals.

Don't believe everything you are told!

Following neatly on from the previous article, we look at some recent examples of where HMRC have made simple errors when issuing assessments.

These examples reinforce that HMRC don't always get it right and that the basic facts should always be checked before getting into discussions on technical grounds.

Errors on Accelerated Payment Notices

Accelerated Payment Notices (APNs) were introduced in 2014 and give HMRC the power to demand disputed tax to be paid up front where the taxpayer has used a tax avoidance scheme. There has been a wave of APNs issued in 2015 with very little wriggle room for the taxpayer to avoid paying up.

As the demand is quite likely to be of a sizeable sum, it is a given that the amount stated on the APN should be cross-checked, even if this is just a formality. Unfortunately, however, it appears that this formality is leading to the realisation that errors are common.

One APN received in our Cheltenham office contained four different figures within the three page letter. The figures ranged from £1,000 to £76,000! After numerous calls to HMRC trying to locate someone who could assist and a number of discussions, the lower amount was finally agreed as the correct figure and a new APN issued.

Another APN was issued with relief being denied for the full interest amount on the individual's tax return, whereas actually only part of the relief related to the scheme in dispute. Representations were made to the relevant officer on this basis which had the effect of extending the deadline for payment of the APN. In the meantime, however, HMRC's debt management team continued to chase the client for payment. Again numerous calls were required to resolve the issue and receive the amended APN.

Yet another APN was issued with the incorrect amount stated. Representations were made

which HMRC accepted, but then a new APN was issued with an even higher amount, nearly £90,000 more than was actually due.

The good news, as mentioned above, is that where HMRC have made errors, representations can be made and the deadline for paying the APN liability pushed back. Therefore, HMRC making an error could lead to more time for the taxpayer to free up the cash to pay their APN. This is dependent though on the mistake being picked up and not taking what HMRC say as holy law.

For those familiar with APNs, the money paid is merely an up front payment of the tax in dispute. The technical argument as to whether the liability should actually apply is yet to be had, which does not fill us with much hope if they can't get the numbers right to begin with!

The assessment window

A VAT case heard by the Upper Tier Tribunal at the beginning of the year found that the sale of a building to a college by a property development company should not be treated as a transfer of a going concern. This should have resulted in a VAT liability of almost £3.5million being applied on the sale, at the standard rate of VAT at 20%.

The twist comes, however, with the taxpayer not having to pay the VAT liability as, although they lost on technical grounds, it was held that the assessment was made out of time by HMRC. For VAT returns, HMRC must raise an assessment by the later of:

- two years after the end of the VAT period; or
- one year after HMRC have sufficient evidence to make the assessment;

but in any event no later than four years after the end of the VAT period.

The moral of the story is to always check whether HMRC have made their assessment within the set time limits, before launching into a dispute on technical grounds.

Further tightening of entrepreneurs' relief rules

As covered in our last edition of Talking Tax, the December 2014 Autumn Statement included the unexpected announcement that the disposal of goodwill to a close company related to the vendor would no longer qualify for capital gains tax entrepreneurs' relief.

Two further measures were announced in the March Budget, effective immediately, to further restrict the availability of entrepreneurs' relief on disposals of business assets. These changes will have the effect of increasing the tax payable on certain disposals from 10% to the main rate of 28%.

Assets held outside of the business

The first measure tightened the rules on claims to entrepreneurs' relief in respect of disposals of assets, held personally by an individual, but used in the trade of their partnership or company. Subject to certain conditions, it is possible to claim the 10% entrepreneurs' relief rate of tax on such disposals, where they are associated with a full or partial withdrawal from the business itself. Withdrawal from the business was not previously defined, leaving open the possibility of a claim to entrepreneurs' relief on asset disposals at the same time as a very small reduction to an individual's shareholding or partnership share.

To ensure that entrepreneurs' relief is only available where an individual has genuinely withdrawn from a business, it is now only available on disposals of personally held assets where they accompany a disposal of at least a 5% shareholding in a company or at least a 5% share in the assets of a partnership.

As the rules have started to bed in we have found that this change could adversely impact some genuine commercial deals. Anti-avoidance rules have also been introduced alongside the change such that there can be no arrangements for the purchase of connected shares following the disposal. Therefore, if shares are issued by an unconnected purchaser to the vendor as part of a commercial deal they would be within the new rules.

In the example above, the sale of the shares themselves would still be eligible for entrepreneurs' relief, but if any disposals of assets such as a property held outside of the company or partnership are planned at the same time, relief may not be available.

Although HMRC have confirmed that the rules had not been drafted to catch such commercial transactions, the rules as they stand are unchanged. There may, however, be ways to plan around these unintended consequences and we can provide further advice on this if you think you could be affected.

Joint ventures and corporate partners

The second measure aims to restrict entrepreneurs' relief to those with a genuine stake in a trading business and prevents claims to the relief in respect of gains on shares in certain companies which invest in joint venture companies, or which are members of partnerships. In these circumstances, relief will be denied.

For example, a corporate partner with no other trading activities will no longer qualify for entrepreneurs' relief on a share disposal. However if, for example, the corporate partner also carried out trading activities of its own, such as a company providing the services of employees, it may potentially qualify. The rules are complex though and a number of conditions would first need to be satisfied.

For the avoidance of doubt, shares in normal trading companies or the holding companies of genuine trading groups should not be affected.

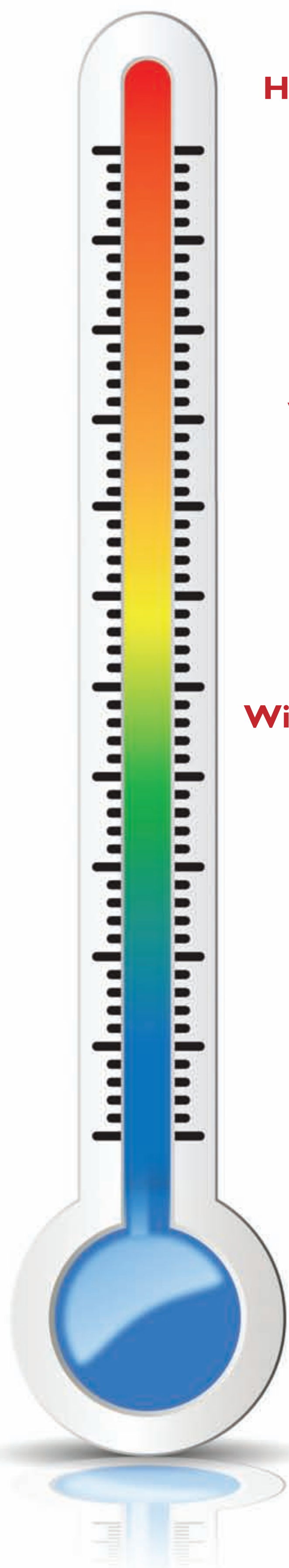
What next?

It is becoming very apparent that entrepreneurs' relief has been and will continue to be, looked at by HMRC. Their aim is to restrict this valuable relief to those with genuine trading links, however, some simple commercial transactions may also be inadvertently caught.

Time will tell if any changes are made or new restrictions announced. In the meantime if you are looking to sell a business or assets associated with it, we would recommend that the tax implications are considered early on.

A summery Budget for some

The Summer Budget was greeted with a warm welcome by some but no doubt received a frosty reception from others. We look at the winners and losers from the announcements on a scale of 'what's hot and what's not'.



	Key announcement	Winners and losers
Hot, Hot, Hot	**Personal allowance increase to £11,000 in 2016/17**	The personal allowance continues to increase and at a faster rate than promised in the March Budget. Nearly 300,000 working individuals will be left with a warm glow after this measure will take them out of the charge to income tax altogether.
	An exemption from IHT for many family homes	The hotly anticipated IHT exemption for family homes that are passed down to direct descendants (children and grandchildren etc.) will come in from April 2017. An additional allowance of up to £350k per couple will be given by 2020/21 with provisions also included protecting those wishing to down size.
Warm front	**CT rates to reduce to 19% in 2017 and 18% by 2020 and Employment Allowance to increase to £3,000**	Reducing corporation tax and employer NIC bills can only be warmly received by companies. The only slight reservation is whether the new National Living Wage could wipe out these benefits for some.
	Annual Investment Allowance (AIA) set at £200,000 from 1 January 2016	Good news for businesses - although lower than the current £500,000 AIA it is much higher than the £25k originally announced and provides certainty by fixing it for at least the next five years. The timing of a winter spending spree on capital expenditure may still be key as transitional rules will apply.
Wintry Breeze	**Accelerated CT payment dates for large companies**	This announcement will rain on the parade of the bigger companies as tax payments will be accelerated where chargeable profits are greater than £20m.
	Reform of the taxation of dividends	The current tax credit will disappear into the sunset in favour of tax free dividends up to £5,000. The tax rates in excess of this will be 7.5% (basic rate), 32.5% (higher rate) and 38.1% (additional rate) from April 2016. There could be winners and losers here and it will be an essential consideration when looking at next year's remuneration strategy.
Chilly	**Wear and Tear allowance withdrawn from April 2016**	Landlords of furnished residential properties will be left feeling cold if they do not replace the furnishings of their rental properties on a regular basis. The 10% straight deduction of rental profits will be replaced with actual expenditure from April 2016.
	Restrictions to pension annual allowance from April 2016	There will be a chill in the air for additional rate taxpayers who will receive a reduced pension annual allowance tapered from £40,000 to as low as £10,000 for those with income over £210,000.
Freezing	**No goodwill amortisation relief for companies on new acquisitions from 8 July 2015**	A further blow against the benefits of incorporation, leaving sole traders and partnerships with a foggy outlook on the best structure to carry out their business.
	Restriction for landlords on tax relief for mortgage interest payments to basic rate tax	To be phased in from 2017 over a four year period but will be a lightning blow for higher rate taxpayers with mortgages on their rental properties.

Child's play

From autumn 2015 a new scheme for providing tax-free childcare to parents was set to be introduced. However, due to a legal challenge by some of the existing childcare voucher providers, this has now been put back until 2017.

This will be disappointing news for some, particularly employees whose employer does not offer access to the existing childcare vouchers scheme and for the self employed who are not eligible to join the current scheme.

Aside from tax, the government has also announced that during 2017, and maybe as early as 2016 in some cases, it will double free access to childcare for working parents. Currently, all children aged 3 or 4 are entitled to 15 hours of free childcare per week. The announcement will effectively double this entitlement to 30 hours per week, but only if both parents are working.

Employment intermediaries - reporting requirement

From 6 April 2015 employment intermediaries including, but not limited to, recruitment agencies are required to file a return each quarter with details of workers they pay outside of PAYE.

Who needs to report?

This reporting requirement follows changes to the legislation in 2014 which introduced a requirement for employment intermediaries to make PAYE and class 1 national insurance deductions, where the workers they supply are subject to (or to a right of) supervision, direction or control by the end client or someone else.

If it was determined that the new legislation did not apply and temporary workers have continued to be paid gross, no further action needed to be taken. However, from 6 April this year the intermediary may instead be required to make quarterly reports.

In summary, an intermediary may be required to report to HMRC if it:

- is an agency;
- has a contract with a third party client;
- provides more than one worker's services to a client;
- provides the worker's services in the UK, or the person is UK resident if the services are provided overseas; and
- makes one or more payments for those services.

Not just recruitment agencies...

The rules are drafted widely and do not only apply to traditional recruitment agencies. In fact any worker whose services are provided to a client via a third party would potentially be within the rules.

For example, a self employed locum who is engaged by a veterinary practice but then personally provides their services to a third party client (e.g. a farm) could be caught by the rules. As detailed above, for the rules to apply, there would need to be a separate contract between the veterinary practice and the farm and the veterinary practice would need to be providing the services of more than one locum/worker in this way.

Clearly, providing the individuals are 'true' consultants the end position will be the same and they can continue to provide their services without being subject to PAYE. However, the veterinary practice would now be required to file quarterly reports.

What to report

Initially, HMRC provided a long list of onerous information to be included on the quarterly report (including the worker's title, hours worked, passport number). Following concerns being raised that too much information was being requested, resulting in an unnecessary administration burden, the list was shortened. It still remains, however, a lengthy list!

The latest information required includes; full personal details of the worker being paid gross, a reason as to why PAYE is not operated and amounts paid.

The report will need to be filed via an online HMRC service. Once made, the intermediary must continue to make quarterly reports until it either; files nil returns for 3 consecutive tax years (i.e. it does not have any workers that PAYE is not operated for) or it notifies HMRC that it is no longer an employment intermediary.

Deadlines and penalties

A report must be made within 30 days of the end of the reporting period. The first reporting period ran from 6 April 2015 to 5 July 2015 with a deadline of 5 August 2015.

If a report is filed late an automatic penalty of £250 will apply. A second offence within the same 12 month period will be subject to a £500 penalty and £1,000 will be levied on third and later offences within 12 months.

Penalties may also be applied where the report is incorrect or incomplete.

Action to take

If you have not yet submitted a report but are paying temporary workers gross, please do contact us to discuss your position further.

Share and share alike

Do you want to:

- incentivise your employees;
- help improve your company's performance;
- attract new employees and retain existing staff;
- increase staff remuneration without immediately impacting on cashflow;
- raise working capital?

If the answer is 'yes' to any of the above an employee share scheme might be a good route to explore. Participation in share schemes normally has the caveat that the employee needs to remain within the business and, as such, provides a way to reward and retain staff whilst improving the performance of the business.

Which scheme is right for you?

There are a number of different schemes available and the decision on which one(s) to implement will depend on the objectives of the business as well as the needs of your employees.

There are two basic types of share schemes:

1. Share option schemes - these "grant" employees share options, which provide the right to buy a certain number of shares in the company at a fixed price in the future. Targets and/or conditions can be set by the company which must be met before the options are granted or exercised.
2. Share award schemes - these give employees actual shares, either free or at less than market value.

The scheme may also be an approved HMRC scheme or an unapproved scheme. Typically an approved scheme offers tax advantages and reliefs, however, an unapproved scheme may suit those looking for something more flexible.

Each type can then be broken down into the actual schemes themselves. There are a number of them and we have compared some of the more popular ones below. As many of the approved schemes have certain criteria and conditions it may be that some can be quickly ruled out.

For example, if you are looking to only incentivise key staff a SIP could be ruled out straight away. Also, if you would like to award shares with a value of greater than £30,000 a CSOP is not going to be suitable.

A comparison

	Enterprise Management Incentives (EMI)	Employee Shareholder Status (ESS)	Company Share Option Plan (CSOP)	Share Incentive Plan (SIP)	Unapproved option
Best suited to	Small companies wishing to retain and incentivise key staff	Growing companies wishing to incentivise staff	Family or owner managed companies	Companies wishing to offer a flexible scheme to reward all employees	Companies wanting flexibility with the share scheme offered
Share award or option	Option	Award	Option	Award	Option
Company restrictions	Must have gross assets of less than £30m and less than 250 employees. Must also be independent i.e. not controlled by another company	None	Must be an independent company or a company controlled by a listed company	Limited restrictions	None
Monetary limit	£250,000 per employee up to a maximum total of £3m	No upper limit but the shares received should be worth at least £2,000 on issue	£30,000 per employee	The company can gift up to £3,000 worth of shares per year, plus other options available to acquire additional shares	No
HMRC approved?	Yes	Yes	Yes	Yes	No
Tax	No tax or NI on grant or exercise unless at less than market value. Capital gains tax on disposal. Notification to HMRC within 92 days of grant of options and to obtain agreement of market value	Income tax and NI on award for the value above £2k. No capital gains tax on disposal providing the shares were worth less than £50k when acquired	No tax or NI on grant or exercise providing certain conditions are met. Capital gains tax on disposal of the shares	Shares disposed of: ■ after 5 years - no income tax, NI or capital gains; ■ after 3 years but less than 5 - income tax and NI on the lesser of initial value and market value at withdrawal ■ less than 3 years - income tax and NI on the market value at withdrawal	Income tax on difference between market value and price paid on exercise. Capital gains tax on disposal where above exercise price

	Enterprise Management Incentives (EMI)	Employee Shareholder Status (ESS)	Company Share Option Plan (CSOP)	Share Incentive Plan (SIP)	Unapproved option
Does it have to be offered to all employees?	No	No	No	Yes	No
Any restrictions for employees	May not be eligible if working for less than 25 hours per week, or if less, 75% of their working time, or if they own more than 30% of the shares	The employee must give up certain employment rights in return for the shares	Yes. May not be eligible if a part-time director or if they own more than 30% of the shares	No but a minimum period of employment can be specified by the employer before the employee qualifies	No
Corporate tax deduction (Broad treatment subject to certain other conditions being satisfied)	Difference between market value and price paid by the employee on exercise	Market value of the shares on transfer	Difference between market value and price paid by the employee on exercise	For the costs incurred of providing the shares and running the SIP plus the market value of the shares provided	Difference between market value and price paid by the employee on exercise

Other options?

The list above is not exhaustive and there are other schemes and options which could also be considered depending on the circumstances and requirements of the company.

In fact, if the company does not want to issue any shares but still incentivise staff they could instead consider a 'Phantom Share Option Plan'. This is a deferred cash bonus arrangement where the amount of the bonus paid is determined by reference to the increase in market value of a fixed number of shares during the period of the option. Tax and NI will be paid on the bonus in the normal way which is one of the main downsides, compared to the HMRC approved schemes.

Where we can help

We can provide advice on the most appropriate employee share scheme, tailored to meet your company's objectives and employee needs. We can also assist with share valuations required for tax purposes and any ongoing reporting obligations to HMRC of the scheme.

A day out at the races, on us!

With the end of the 2014/15 tax year long behind us, now would be a good time to dig out your information for the year and send it across.

As an added incentive, if you get your information across to us by 30 September 2015 you will be entered into our prize draw to win two VIP tickets to Ladies Day at the Cheltenham festival on 16 March 2016.

The prize includes two club enclosure tickets, car parking, a champagne reception, four course lunch, complimentary bar throughout the day, afternoon tea and much much more.

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Capital goods scheme assistance
Second hand goods margin scheme advice
VAT training
VAT for charities
Partial exemption calculations including special methods

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Assistance with tax investigations
Community Investment Tax Relief
Tax Investigations Service

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