Autumn 2013

Talking Tax

Guiding you to lifelong prosperity

Introduction

Welcome to the Autumn edition of Talking Tax. We hope you are refreshed and raring to go after the Summer break. Here at Hazlewoods we are busy sharpening our pencils to prepare for Self Assessment season and, ultimately 31 January. As ever, please let us have your tax return information as soon as possible so as to ensure the filing deadline can be met.

Annual plea done, we turn to what is in this newsletter. This edition we go back to basics with deadlines, cash and compliance matters. We summarise HMRC's Time to Pay scheme to help you manage any outstanding tax liabilities and discuss what the authorities are doing to access data about taxpayers' cross border activities.

Thinking about business taxation, this edition's Quick Win looks at the tax to be saved by having motorcycles as business assets and we take a look at the growth of employee share ownership. Back on the home front, the tax reliefs available if you are moving house this Autumn are examined in the light of a recent case against the taxpayer.

Finally we look at two new areas of anti avoidance legislation around certain partnerships and personal service companies. How do you navigate the new rules? We offer you a compass.

Talking Tax aims to cover tax developments as they arise as well as demystify common tax issues. We want to help you get the most from how you and yours manage your tax position. If you have any thoughts or comments please speak to your normal Hazlewoods tax contact.

Contents:

Tax to-do's for Autumn

Forget Kate Humble and Bill Oddie, Hazlewoods brings you Tax AutumnWatch. While we can't promise baby hedgehogs, we can help you avoid prickly moments caused by the deadlines coming up soon.

The current 'My Tax Return Catch Up' campaign ends on 15 October. HMRC launched this back in July, for those who have failed to act upon the receipt of a return, or a notice to file a tax return, for all years up to and including 2011-12. You may have received a call or letter about the campaign. All outstanding returns and payments should be submitted by mid October in order to receive the 'best terms available'.

The new Annual Tax on Enveloped Dwellings (ATED) applies to high value UK dwellings (over £2m as at April 2012) held in a corporate 'wrapper' or 'envelope'. A banded tax charge based on value will be due each year and a return must also be filed. An ATED period will last for one year from 1 April each year. Broadly, returns and payment of the tax are due by 30 April each period. Special rules apply for purchases of dwellings during the period.

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However, 2013 is the first year the tax has been in operation and so there is a one off deadline of 1 October for the return and 31 October for the payment. Contact us as soon as possible if you think this new tax affects you especially if you missed this one off deadline. And, finally, two important Self Assessment due dates: Firstly, if you think you had chargeable income or gains in the year to 5 April 2013 you had until 5 October to notify HMRC of your chargeability. Don't despair If you are a little late - we can help. Secondly, if you file a paper return the due date is 31 October. Digital filing is 31 January 2014 so please speak to us if you want to switch over and we can get you registered online.

Making Allowances

While, it is debatable whether the property market is recovering after a slow, stagnant period, if you are considering a move, getting the best deal is an undeniable goal for everyone. Capital allowances have a part to play here. Their availability can affect values considerably.

Understanding the changes in the capital allowances regime over the last year or so is therefore worthwhile. Even if you are happy where you are the developments will be of interest – there may be allowances available that you haven't claimed yet.

What has changed?

Broadly, where a commercial property is now sold, the Purchaser's position regarding what capital allowances are available will need checking carefully at the time of the deal and will be dependant on what the Vendor has already claimed.

Vendor claim

Where there has been a claim for capital allowances by the Vendor on qualifying fixtures and integral features (or any previous owner) then the allocation of available capital allowances needs to be agreed between Vendor and Purchaser using a "s.198 Election" Agreement. Although this does not have to be signed before completion, it does have to be signed before two years has elapsed from the completion date. Signing as part of the deal means you are less likely to miss the filing date. If the acquisition is not harmonious and you can't agree upon the allocation of capital allowances in this way either party may go to Tribunal adjudication. If deadlines are missed and the allocation is not made within the two years given, capital allowances will not be available to, not only the current Purchaser, but any subsequent Purchaser.

No Vendor claim

As previously, a Purchaser may make a capital allowances claim for qualifying fixtures and integral features based on "a just and reasonable apportionment" of the purchase price assuming they meet the normal requirements, such as carrying out a qualifying activity or trade etc.

April 2014 onward

Things really hot up in April 2014. From then onwards, if capital allowances are not dealt with before completion the Purchaser (and any subsequent Purchaser) will lose all future rights to claim capital allowances. Ignoring capital allowances can hit property values hard. The Vendor also has to work to do. They must "pool" the capital allowances before they can be transferred using a s.198 Election Agreement. This will probably not be too onerous where the Vendor (or previous owner) has already made a full capital allowances claim. But what if they haven't? If the vendor was able to make a claim but hasn't, the allowances are lost forever.

Understandably then, the preference is to make a claim and s.198 elections a standard part of any commercial property transaction.

Get it right:

A valid s198 election must contain:

- Amount fixed by election
- Name of each person making election
- Unique taxpayer reference of each person, or notification that the person has no reference
- Information sufficient to identify the plant and machinery
- Information sufficient to identify the relevant land
- Particulars of the interest acquired by the purchaser

What now?

Some capital allowances housekeeping is advisable. Areas to think about include:

- What has been claimed so far and is it correct?
- Are there any opportunities to make a s.198 election now in respect of sales or purchases from the last two years?
- Is there scope to perform or renew an apportionment?
- Have capital allowances been adequately covered in any due diligence you are commissioning?
- Is a s.198 election a condition of sale? Do you want it to be?

We have a number of tax experts who can help discuss these and related issues. Please contact Nick Haines for further information.

We all stand together?

By now we should all be familiar with HMRC's repeated focus on the abolition of what they see as tax avoidance in taxpayers' business arrangements. As part of this, the last Budget brought the whole area of partnership taxation under the microscope.

In response to the growth of Limited Liability Partnerships (LLPs) and the use of Fixed Share Partner status to remunerate key individuals, HMRC issued a consultation document asking for opinion on two draft alterations in how these areas are to be treated. Responses have been submitted and we await the draft legislation later this year.

We believe that the proposals are, in fact, a catalyst for a more fundamental review of how partnerships operate and are structured. While the technical detail is complex, we will just consider the main implications as follows.

The two main areas under review are:

- the employment status of certain types of partners and
- the way that profits are allocated amongst different types of partner.

In both cases, HMRC are seeking to root out artificial arrangements by applying basic tax principles, not previously considered to be in point, to existing partnerships.

So, looking at the employment status question, the proposed legislation will ask whether members of LLPs and any Fixed Share Partners (FSP's) are really self employed.

Status is to be determined by looking at a series of 'badges' of employment as shown. The badges are relatively objective but diverse - keeping a tab on them all can be a challenge. On top of these badges is whether the partner in question is really bearing any economic risk.

On the face of it, this approach should not bring any major issues to the majority of businesses. The Partnership Act 1890 states that a "partnership is the relation which subsists between persons carrying on a business in common with a view of profit", a definition that is over 120 years old. The familiar issue of proving your position is therefore likely to be the problem area. A review of your particular arrangements and how you can justify them might be a prudent action for the winter months. The whole question of economic risk in particular should be considered.

HMRC have conceded some exceptions, such as members of an LLP who are in essence partners of a traditional partnership but for the legal construct of an LLP, and the hope is that these exceptions will protect the majority of LLPs. Our advice, however, is to have a look at your status in any case so that you can confirm your particular position.

An important practical point will be how to make sure that the rising stars in the partnership are not hit by these changes - as an employee makes the transition to equity partner in recognition of their abilities, how can you make sure they do not suffer undue tax liabilities? Again, HMRC have recognised this possibility and it is up to the business to prove that the high flyer is aiming for the top rather than perching as a pseudo partner with no intentions to advance further.

Turning to the second arm of the proposed legislation, HMRC are seeking to counter manipulation of profit and loss allocations and the use of 'mixed' partnerships, i.e. those made up of individuals and companies. Two tests are suggested, contribution and economic interest.

Contribution looks at whether a corporate member has a significant share of profits allocated to it without a suitably material contribution to the business' activities itself i.e. does it get profits but not actively earn them.

Economic interest is concerned with whether individual partners are avoiding tax by using a corporate partner to 'cloak' profits that should be allocated to them. If the partners have an interest in the corporate partner, HMRC will suspect that an artificial arrangement is in place and act accordingly.

Overall, our take on the consultation is that innocent parties may well be caught and the consultation as it stands fails to understand the commercial realities that modern partnerships have to face in an increasingly competitive environment. We regularly assist partnerships as they look to restructure, acquire or divest themselves of assets and businesses. The uncertainty that these proposals have created is commercially inconvenient at best and costly at worst. Until we know the final picture we can only recommend that businesses adhere to the basic principles of partnership operations and ensure that any relevant decision e.g. structuring, should be properly documented including the commercial motive.

There should be a level playing field between corporate and non corporate entities. Burdening partnerships with an additional layer of proof does not help achieve this. Overall,

Badges of employment

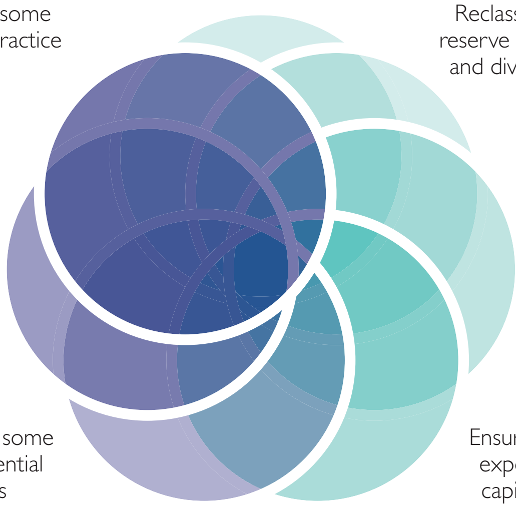
Control	Personal Service	Equipment
Financial Risk	Basis of payment	Mutuality of obligation
Holiday, sick pay and pension rights	Part and parcel of organisation	Right to terminate contract
Opportunity to profit from sound management	Personal factors	Length of engagement
	Intention of the parties	

other parties' responses to the consultation have voiced similar concerns.

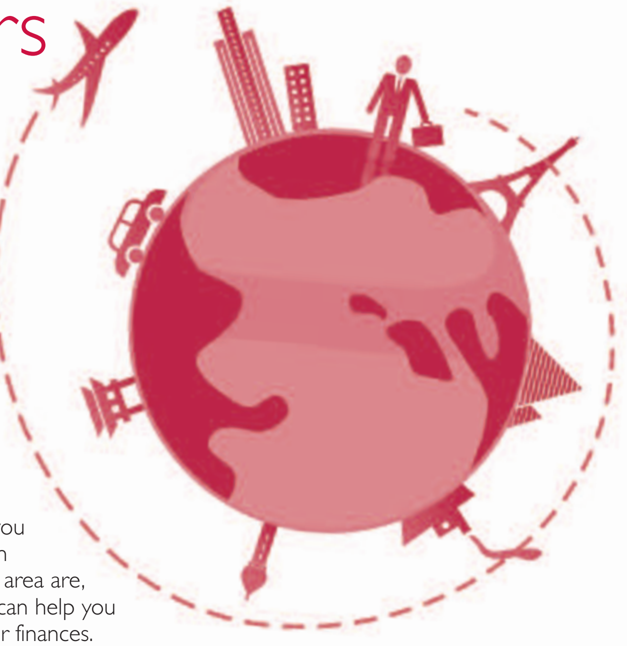
We expect the draft legislation in the next couple of months. Hazlewoods has contributed to the consultation process and will continue to actively monitor and advise on the position. In the meantime as set out in the neighbouring diagram we suggest some 'good housekeeping' actions for those of you who have Fixed Share Partners rising through the ranks.

Please speak to your normal Hazlewoods tax contact if you would like a more detailed conversation about this developing area. We will of course keep you updated as the legislation progresses.

(Chart - Right) FSP = Fixed Share Partner



Compliance sans frontiers



The world continues to shrink. Businesses, from one man band start ups to large established concerns, increasingly have a global reach, fuelled by cheaper technology and, ultimately, margin chasing.

As you venture into new regions you need to be aware that HMRC are spreading their wings too. This year they have embarked on a number of information sharing arrangements with overseas tax authorities, such as America's Internal Revenue Service (IRS). These will allow the authorities to share, for example, taxpayer's details, planning ideas and risk analyses. HMRC have already commented on the way this co-operation has led to an increased tax take in the UK and we can expect more of the same.

At the same time, the introduction of reporting requirements, such as the new Annual Taxation Enveloped Dwellings (ATED) regime means that HMRC are also expecting UK taxpayers to share more information. Finally, they have launched a number of 'campaigns' to round up even more data, this time from underpayers who wish to 'come clean'.

Our message? If you are trading overseas or own any overseas assets give us a call to talk through your tax position and reporting responsibilities given these recent developments. Are you set up to produce the information HMRC will need? Penalties in this area are, in effect, a matter of choice - we can help you avoid any unnecessary hits to your finances.

Taxation, taxation, taxation

Autumn normally sees a spike in property sales, as homeowners re-evaluate their homes following a few weeks in that luxury villa in the sun. While not all decide to swap a studio for a swimming pool, now is an appropriate time to look at what tax reliefs are available if you do decide to move on.

The main opportunity is the Capital Gains Tax exemption offered by Principal Private Residence Relief (PPR). A recent case (Llewellyn) has highlighted how the burden of proof of principal residence status sits firmly with the taxpayer, and how expensive getting it wrong can be. The unfortunate appellant found his tax bill jumped from just under £500 to almost £17,000 all because he hadn't demonstrated sufficiently to the 'wider world' his stated intentions of using the property in question as his principal abode. To avoid a similar fate make sure you do simple things like changing your postal address to the new home. Each case will be judged on the facts but we can advise you of your particular position if it is unclear.

Costs can be deductible against any taxable gain that isn't covered by PPR so keep a record of what you spend on agent's fees and similar costs. And finally, don't forget Stamp Duty Land Tax (SDLT). Although the purchaser is liable for this tax, does the sales contract identify the assets for sale accurately so that any items outside the scope of SDLT are carved out? For example, if you are selling with carpets and curtains in situ can you split these out separately? You might be able to negotiate a better price overall if you accommodate the purchaser's tax position.

Hazlewoods has extensive experience in helping clients move house tax efficiently. Please call Nick Haines to discuss this further.

On your bike

If you own a business and are thinking about updating your work fleet, have you considered buying motorcycles or scooters? Handy for in town deliveries and getting to meetings as well as the daily commute, they are considered to be plant and machinery for tax purposes and so are 100% deductible at the moment. This is provided that your total capital expenditure is less than the £250,000 Annual Investment Allowance. All the safety gear such as helmets and gloves will also be deductible. If you already own a bike and use it for business as well as personal use contact us to discuss a suitable apportionment basis to improve your tax position as well as your travel times.

Managing your cash - 'Time to Pay'

Times continue to be tough, and increasingly, those with large tax bills to settle may struggle to find all the cash in time to avoid late payment penalties. One option to consider is to negotiate a payment plan with HMRC via their Debt Management and Banking team.

This 'Time to Pay' option can be used for all types of tax debt. Interest continues to accrue but penalties can be avoided completely. It should be agreed before the debt becomes due, so if you think that you would benefit from an instalments arrangement get in touch with your normal tax contact as soon as possible. We can then open discussions with HMRC with a view to agreeing a practical payment plan.

Out of office - when to apply IR35

Another take on the employee/employer status conundrum... the use of personal service companies is commonplace these days. We are used to senior executives providing their experience and skills to a number of companies via their own corporate vehicle. The companies benefiting from the individuals' services then pay a consultancy fee or similar, rather than wages. The tax benefit of this is that the paying company does not need to suffer NICs or take on unnecessary employment responsibilities, and the recipient will normally pay tax at the small companies' (and soon to be single) corporation tax rate of 20%. Cash extracted from the service company is typically in the form of dividends, thus saving income tax too, while expenses of providing the services such as travel costs can be claimed against the fees received.

This works well if the individual is genuinely acting as an independent consultant, working for a number of unrelated organisations. However, a number of individuals have tried to use the opportunity to recharacterise previous employer/employee relationships and HMRC have been keen to stop any tax avoidance resulting from such structures historically principally through the use of 'IR35'.

Before Finance Act 2013, an assessment under IR35 meant a NIC, PAYE and penalties bill for the personal service company, as the income it received from the end client(s) was recharacterised into salary and taxed as such. However managed services companies and offshore umbrella organisations sprang up to try and counter IR35.

Finance Act 2013 has introduced new legislation to increase the scope for tax collection still further by including the end client in the list of potential payers of the employment taxes.

Finance Act 2013 is set to catch scenarios where an employee of an intermediary company is in effect acting as an officer of an end client.

The concept of 'office' centres around whether the role in question is independent of an individual or organisation - a director is an officer, while a sales manager is not. So, for officer one can read 'director', giving HMRC a wider pool from which to fish than previously available.

The new rules add a test for workers who hold an office with the end client. If the services provided via the intermediary relate to that office, they too are caught by IR35. Current opinion is that 'relate to' excludes unconnected consultancy services offered by directors but the facts of each case will decide the position.

So, from now on, if you are deemed to fall within IR35 as an officer then HMRC have the option to go for the (normally) deeper pockets of the end client when seeking tax due. The end client will be treated as an employer and so will be liable to pay employer NICs. They will also be required to deduct PAYE and employee NICs from their payments.

Commercially this could be a disaster for those who work using the personal service company model. Contracts may be re-examined and renegotiated and in the event of a successful enquiry, liabilities could be considerable, both in unpaid taxes and penalties.

What are the chances of this affecting you? Are HMRC likely to come knocking? That will depend on how non-compliant you appear to be on HMRC's scale. Businesses are assessed by HMRC using a 12 category test that results in a total score which is used to determine the likelihood of a full IR35 investigation. The categories considered summarise the characteristics of a 'properly' independent personal service company. They include efficiency, advertising, client risk and billing. If an enquiry is opened then the burden of proof is firmly with the individual and evidence will be asked for to defend the tax position taken. Each case will be determined by the facts.

The tests guidance is available to read online at http://www.hmrc.gov.uk/ir35. The badges of employment discussed elsewhere in this edition of Talking Tax are also worth considering afresh. If, having done this, you feel that you could be affected and you are a non executive director working via an intermediary or a director providing separate consultancy services please speak to your Hazlewoods tax contact.

All right now Jack?

The rise and rise of employee ownership

Time was when employees were just that, employed. They received their cash wages in return for their work and paid income tax if applicable.

These days, in a climate of increasing employee protection legislation, head hunters and risk management, there are many shades and types of employment and remuneration. Tax management is only one factor to consider of course, but it is valuable.

Payment in shares can 'lock in' key workers or decrease short term risk if taken instead of one off cash bonuses. If the Treasury are to be believed, this trend is set to strengthen with the introduction of 'employee shareholders' which will be fuelled by an annual £50m injection from public funds.

Employee owners will be able to receive shares in their employer company, valued between £2,000 and £50,000. These will be exempt from Capital Gains Tax (CGT) on disposal, and income tax on the first £2,000 in value of shares received. In return for this slice of the corporate pie, the employee will give up certain employment rights - to unfair dismissal (except where this is automatically unfair or relates to anti-discrimination law), certain rights to request flexible working, and statutory redundancy pay. Employee owners will also need to give longer notice to return from maternity leave or adoption leave.

Against that encouraging backdrop, what does one have to consider when thinking about inserting an employee ownership structure? What is the position if you acquire a company with one already in place? We'll look at some of the main factors to consider here:

- Why do you want to issue shares? Is it to encourage long term employment, reorganise, reduce risk or save cash reserves?
- Who do you want to receive the shares? Is this a general issue to all employees or targeted to individuals or grades?
- How big is the business and in what industry? The larger the company the more commercially viable a scheme becomes. Simple schemes are cheaper to run but may be out of bounds to certain industries such as investment management.
- What is the position of the existing shareholders? Do they want to retain control or are they looking for an exit? For example, would an MBO be the best route?
- What do you want to do when/if the employee leaves the business? Do they have to dispose of their shares or options? If so, on what terms?

The implementation of any employee incentive plan is a key commercial decision. Once you have got a clear idea about the commercial outcome you are aiming for we can advise with respect to the tax position. This article gives you a flavour of the tax angle but we strongly recommend you speak to Tom Woodcock, one of our share schemes experts, to get the full picture.

Hazlewoods Tax Team

Services

We provide specialist advice in all areas of tax including the following:

- Business structuring
- Employer services
- Inheritance Tax and estate planning
- Partnership Tax services
- Tax Investigations
- VAT
- Corporation Tax
- International Tax services
- Owner Managed Businesses
- Personal Tax
- Trust Tax
- Stamp Duty and SDLT
- Transactions, planning and support
- Capital Gains Tax planning
- Tax Litigation Support

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