Talking Tax

DRIVING LIFELONG PROSPERITY

Spring 2019

SPOTLIGHT ON ENTREPRENEURS' RELIEF

Welcome...

As we enter into spring, and the clouds begin to clear, we are happy to say that the government has also given us a ray of sunshine by amending the Budget 2018 proposals for entrepreneurs' relief!

As a new tax year starts, we also have a look at some tax changes coming in from April 2019 including a new tax relief for goodwill and accelerated instalment payments for very large companies.

We also look at the taxation of company cars and considerations for employers/ directors when looking to purchase. Lastly, we highlight an apparent change in stance by HMRC for SDLT claims for residential properties with extensive land.

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hERe to stay?

Entrepreneurs' relief (ER) provides a reduced rate of capital gains tax of 10% on the disposal of certain business assets, where specific conditions can be met. With such a beneficial relief, a business owner's tax liability can effectively be reduced by up to 50% on disposal.

The 2018 Budget, however, announced an unexpected and immediate change to the qualifying conditions to be satisfied to claim ER on the disposal of shares in a 'personal company'.

There was no consultation on the proposed changes and the rules, as originally drafted, were set to deny relief for a number of commercial arrangements including companies with multiple classes of shares, growth shares and/or non-commercial debt. Following representation, however, a last minute amendment to the legislation was made which has largely alleviated this concern.

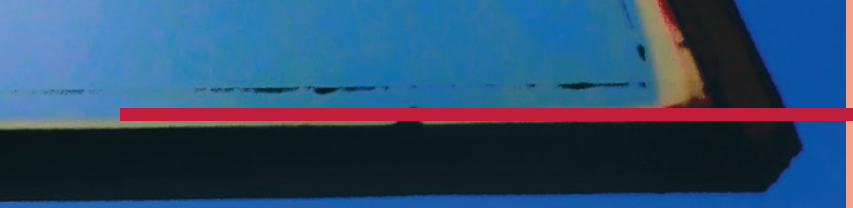
Prior to 29 October 2018, all of the following conditions must have been met by the seller to qualify for ER for at least one year prior to a share disposal:

- own at least 5% of the ordinary share capital;
- hold at least 5% of the voting rights in the company; and
- be an officer or employee of the company or another company in the group.

In addition to the above, for disposals made on or after 29 October 2018, the seller must now also meet one of the following two tests:

- be beneficially entitled to at least 5% of the profits available for distribution and 5% of the assets available on a winding up of the company throughout the qualifying period; or
- be beneficially entitled to at least 5% of the proceeds on disposal.

The first of the above two tests was originally introduced as a standalone condition to be satisfied. However, Hazlewoods, along with other professional firms and bodies, made representations to the government to highlight that this condition was far wider reaching than originally intended. For example, a company with more than one class of share (commonly known as alphabet shares) where an individual did not have a guaranteed entitlement to at least 5% of any dividends paid, would no



longer have been eligible to claim ER. The second condition now introduced, however, should help address this issue, providing that it can be shown that the individual would be beneficially entitled to 5% of the proceeds on an assumed sale of the whole company.

In addition to the above, for any disposals made on or after 6 April 2019, the minimum holding period to qualify for ER will be increased from one year to two years.

The good news is that for now, ER is here to stay. Despite annual rumours around Budget time that ER might be taken away, the Chancellor confirmed in his Budget speech that the government is committed to supporting entrepreneurs. Hopefully next time they decide to tweak the rules, they may think to consult on it first!

New goodwill – not much of a relief!

The government cannot seem to make their mind up as to whether tax relief should be available for goodwill. The rules for intangible fixed assets have gone through a number of changes in recent years, with tax relief for goodwill removed altogether in 2016.

In a somewhat about turn, the government has now announced a new relief for goodwill and other relevant assets, including customer lists/relationships, for acquisitions on or after 1 April 2019.

Unfortunately, however, it is not as straightforward as claiming amortisation relief on the goodwill acquired. Both of the following conditions must be met to qualify:

- the goodwill must be acquired as part of an acquisition of a business (e.g. trade and assets purchase); and
- qualifying IP must also be acquired and continued to be used in the business.

Qualifying IP includes patents, copyright, design rights and registered designs but notably does not include registered trademarks.

The amount of goodwill available for relief will be linked directly to the value of the 'qualifying IP' acquired and relief will be capped at the lower of:

i. six times the fair value of qualifying IP; or

ii. the total value of goodwill and other relevant assets.

Taking an example of goodwill acquired as part of a business acquisition with a value of £200,000, the maximum tax relief has been highlighted below based on three different values of qualifying IP.

	GOODWILL VALUE	QUALIFYING IP VALUE	SIX TIMES QUALIFYING IP
1	**£200,000**	£40,000	£240,000
2	£200,000	£20,000	**£120,000**
3	£200,000	**Nil**	N/A

For qualifying goodwill, relief is given at a fixed rate of 6.5% of the cost of the asset per annum. However, due to the way the available relief is calculated, a number of sectors and industries will immediately be ruled out from qualifying for goodwill relief.

QIPS FOR VERY LARGE COMPANIES

From 1 April 2019, 'very large' companies will be subject to accelerated quarterly payments, for accounting periods beginning on or after this date.

A 'very large' company is defined as having taxable profits in excess of £20 million. As with the current quarterly instalment rules for 'large' companies (i.e. with taxable profits in excess of £1.5 million) this figure is adjusted pro rata if the company has a shorter or longer accounting period than 12 months.

Similarly for groups, the threshold is also divided by the company and number of its associated companies. For example, a company with four associated companies would be subject to accelerated payments if its taxable profits exceeded £4 million.

Unlike the rules for large companies, there is no 'first year of grace' for companies falling within the 'very large' threshold.

If the company's tax liability for the period is less than £10,000, it will not be required to make instalment payments, regardless of whether it is large or very large, and will be subject to the normal payment deadline of nine months and one day after the end of the accounting period.

Timetable for quarterly payments

EVENT	LARGE COMPANIES DUE DATE	VERY LARGE COMPANIES DUE DATE
First quarterly payment date	6 months and 13 days	2 months and 13 days
Second quarterly payment date	9 months and 13 days	5 months and 13 days
Third quarterly payment date	12 months and 13 days	8 months and 13 days
Fourth quarterly payment date	15 months and 13 days	11 months and 13 days

The above dates run from the start of the accounting period, so under the rules for very large companies, all payments will be made before the end of the year. This could lead to an additional tax payment being required post year-end and interest exposure for the company on underpaid tax. It will also impact the cash flow of the company, particularly on transition to the new payment dates.

COMPANY CARS AND TAX

For a number of years, the concept of a tax efficient company car has been diminishing with annual increases to the benefit in kind (BIK) charge. However, the tide appears to be turning and the government has recognised that tax incentives for environmentally friendly cars are a good thing!

Unfortunately, this change will not take place until April 2020 and for 2019/20 tax charges on the individual will be higher than ever. Even the most efficient cars will be subject to a minimum BIK charge of 16% of the car's list price.

The decision to buy a new company car, therefore, may be best delayed by a year. If it is not possible to wait that long it will still be worthwhile bearing in mind the rates from 2020, when deciding which make/model to opt for.

The best option from a tax perspective will be electric cars or hybrid cars that have a good electric range. For cars with CO_2 emissions of between 0g/km – 50 g/km, 100% first year capital allowances will be available for the company and the BIK charge on the individual will drop to as low as 2% from April 2020 where the car has an electric range of 130 miles or more.

For cars with CO_2 emissions of over 110g/km, the tax charges become significantly higher with annual capital allowances of just 6% for the company and a BIK charge of at least 27%, increasing up to a maximum of 37%. For example, a higher rate taxpayer having a company car with a list price of £30,000 and high CO_2 emissions could face a tax bill in excess of £4,000 per annum.

One other point to note is for company cars taken as part of a salary sacrifice scheme. If the CO_2 emissions of the car are in excess of 75g/km and the arrangement has been entered into post 6 April 2017, the individual is now taxed on the higher of the BIK charge and the salary foregone (or cash alternative).

For directors, the decision of whether to own a car personally or via a company could hinge upon whether they are looking to purchase an energy efficient or gas guzzling diesel car. We can help by carrying out a comparison of the tax implications of company versus personal ownership.

Mixed-use claims for SDLT

HMRC are pushing back on mixed-use stamp duty land tax (SDLT) claims for residential properties purchased with extensive accompanying land, asserting that higher rates of SDLT should apply.

The rate of SDLT applied to a property purchase depends on its use. Residential property purchases are subject to higher charges than commercial or mixed-use properties.

WHAT IS A MIXED-USE PROPERTY?

A property that has both residential and non-residential elements is treated as mixed-use for SDLT purposes. A typical example would be a building with a shop on the ground floor and flat above it.

Further, it has been widely accepted that a purchase of a residential property with land in excess of that as is required for 'reasonable enjoyment of the building' would be treated as non-residential.

A CHANGE IN HMRC STANCE

HMRC now appear to be pushing back on mixed-use claims for residential property purchases with extensive land. Correspondence exchanged with HMRC suggests that such claims will now only be accepted where it can be demonstrated that a commercial return has been received for use of part of the grounds.

In contrast, for capital gains tax purposes, principal private residence relief is generally only available for land up to half a hectare attached to the property. In the SDLT cases we have seen, the land has been in excess of 100 acres and yet HMRC are classing this as entirely residential!

This change in stance goes against previous practice and HMRC guidance. For a property purchase of say, £1.5 million, this could result in an additional SDLT liability of over £30,000 and more than £70,000 if the property is not acquired as the individual's main residence.

IF YESTERDAY WAS YOUR LAST...

Do you know what your inheritance tax liability would have been? Perhaps not something you wish to think about or something you have been putting off for a while. Nonetheless, it is an important consideration to ensure that the tax payable on your estate is minimised as far as possible.

Depending on your circumstances, some simple planning can help to reduce your exposure to inheritance tax, or for larger estates, we can advise on more complex planning to shelter assets from inheritance tax whilst protecting your investments.

We can also assist with succession planning to ensure that the family business or assets are passed down in a tax efficient way whilst also meeting family objectives.

Please get in touch with either Lucie Hammond (lucie.hammond@hazlewoods.co.uk) or Kyle Nethercott (kyle.nethercott@hazlewoods.co.uk) if you would like to review your current position, or would like further information on possible planning opportunities.

Welsh income tax rates

Powers to set income tax rates for Welsh taxpayers have been devolved to the National Assembly for Wales with effect from April 2019. The good news is that for the 2019/20 tax year, the National Assembly for Wales has confirmed that they will remain in line with the existing tax rates.

This seems to be the sensible move to give time to adjust but it will not be a surprise to see changes, as with Scottish taxpayers, in the near future.

The test to determine which income tax rates a taxpayer is subject to is dependent upon, broadly, where the individual's main residence is. This is a factual test and it is not possible to elect to be a taxpayer in a different country, for example, just by virtue of having a second home or postal address there.

In general, it will be determined by where you live and spend most of your time, but there are some exceptions to this rule if you have stronger ties (such as family, possessions etc.) with a second home.

When should I talk to my tax adviser?

THE ANSWER IS, PROBABLY MORE OFTEN THAN YOU MIGHT THINK!

Most business transactions and many personal endeavours will have some tax implications. Often there are ways in which they can be structured in order to minimise taxes including capital gains tax, stamp duty land tax, inheritance tax and VAT along with income and corporation taxes.

Just a few examples of where tax advice should be sought upfront include:

- acquiring or transferring properties;
- making EIS or other venture capital tax advantaged investments;
- making large one-off pension contributions in a given tax year;
- starting a new business or venture; and
- when someone down the pub gives you a 'foolproof' way to save some tax!

If in doubt, please pick up the phone and have a quick conversation. It is much easier to ensure that something is carried out in the most tax efficient way before the event rather than trying to unravel unintended consequences at a later date.

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