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BUSINESS UPDATE

A budget for business

'Budget 2011 is about recognising the value you bring to the economy and making it easier for you to manage and grow your business' wrote David Gauke, Exchequer Secretary to the Treasury, in a letter to businesses following the Budget announcements.

The proposals to achieve this include:

- measures to cut the red tape on small businesses such as reducing the financial reporting burdens and the number of businesses required to undertake audits
- enhanced tax incentives for investment in higher risk companies through the reform of the Enterprise Investment and Venture Capital Trust Schemes
- reducing fixed costs for the small business by extending the business rate holiday for one year from 1 October 2011
- encouraging innovation by increasing the tax relief rate for the small or medium sized business when they invest in qualifying research and development to 200% in 2011 and 225% in 2012 (subject to State Aid approval)
- setting up 21 new Enterprise Zones which will benefit from simplified planning approaches, a business rates discount and other measures.

We will continue to keep you informed as these initiatives develop but in the meantime do not hesitate to contact us to discuss any matters of particular interest.

SUMMER 2011

More painful penalties

Over recent years, HMRC have become increasingly interested in the world of offshore tax evasion.

Some of this has been fuelled by HMRC's success at obtaining details from UK based banks about UK customers with offshore accounts. In addition, details have been passed to HMRC by ex-bank employees regarding offshore accounts.

You may remember various HMRC attempts to encourage taxpayers to voluntarily come forward and disclose past errors in relation to offshore accounts:

- the Offshore Disclosure Facility (ODF) ran from April to November 2007 and generated over £450m in tax, interest and penalties
- the ODF was followed by the New Disclosure Opportunity which ran from September 2009 to March 2010 and
- the Liechtenstein Disclosure Facility (LDF), which runs until 31 March 2015. Under the LDF, all financial intermediaries in Liechtenstein will require those who should disclose their taxable assets to HMRC to do so or have their accounts closed. The LDF is expected to generate over £1bn by the time it closes.

Building on all of this, HMRC are now warning anyone with tax irregularities involving offshore affairs that they could face new penalties of up to 200% from 6 April 2011. The new penalties apply to income tax and capital gains tax and are linked to the country in which the income or gain arises. Where it is harder for HMRC to get information from another country, the penalties for failing to declare income or gains arising in that country will be higher.

David Gauke, Exchequer Secretary to the Treasury, said:

'The game is up for those going offshore to evade tax. With the risk of a penalty worth up to 200% of the tax evaded, they have a great incentive to get their tax affairs in order.

We have given HMRC an extra £900m to tackle tax cheats because we are prepared to act against the minority who refuse to pay what they owe.'

Dave Hartnett, Permanent Secretary for Tax, at HMRC has also stated:

'We are serious about tackling offshore evasion. Hiding tax liabilities offshore believing that you will never be discovered is no longer a realistic hope.

These new penalties will increase the deterrent against offshore non-compliance. They build on other activity, including signing tax information exchange agreements, requiring information about offshore bank accounts and disclosure opportunities, including the LDF.'

So the message is clear – play ball or else! If this is an area that you would like to discuss, please do get in touch.



Relieving the IHT burden

Agricultural Property Relief (APR) is an important Inheritance Tax (IHT) relief for landowners with the potential to save IHT at 40% on significant amounts of value. It can be used to reduce the value of qualifying assets on a lifetime gift to trust so that no IHT arises at that time as well as eliminating or reducing charges to IHT at death. It applies not only to qualifying land in the UK but throughout the European Economic Area. The relief is available at either 50% or 100% of the agricultural value of qualifying property depending on precise circumstances. It is also necessary that the owner either occupied the property for the purposes of agriculture for the two years prior to a transfer or the property held by the owner was occupied by someone else for the purposes of agriculture in the seven years prior to transfer.

What is agricultural property?

The property must fall within the definition of agricultural property. Bare land used for agriculture qualifies without restriction. Problems can arise where a claim is made for APR in respect of buildings, especially residential buildings on the farm. The requirement is that the buildings must be occupied for the purposes of agriculture and must be of a character appropriate to the agricultural property.

The issue of large residences claimed as farmhouses is a particular problem area and one in which HMRC are likely to take an interest. It is clear that HMRC expect to see that farming operations are controlled from the house and will then consider whether its character is appropriate. This will involve looking at the physical size of the house and its relationship to the farm. A large property with a small area of farmland may struggle to qualify for relief.

Is it used for agricultural purpose?

Assuming that the property qualifies as agricultural property it must still pass a test of being used for agricultural purposes. These are not comprehensively defined in legislation so professional advice may be required for activities other than common farming activities.

If you would like us to review the availability of this or other IHT reliefs please do contact us.



All a-loan against HMRC?

Where a loan or advance is made to a director of a family company, an income tax charge may arise under the employment benefit rules. HMRC will apply the official rate of interest to the loan (currently 4%) each year and tax the resulting figure.

Given that the majority of family companies are close companies (broadly, controlled by five or fewer shareholders) and that directors of the company are often shareholders, a loan to a shareholder or someone associated with them may give rise to a corporation tax (CT) charge for the company of 25% of the loan. However, when the loan is repaid the CT is repayable.

The idea of taking loans from family companies is not new but they have taken on a new dimension in recent times particularly for additional rate taxpayers. After all a benefit based on 4% of a loan advance is rather different to 50%!

Of course, as we all know, loans have to be cleared somehow. A write off of the loan often seems better than a cash repayment, so what are the consequences?

Well, for the company a write off is treated in the same way as a repayment – any corporation tax paid will be repayable. So far so good.

The individual to whom the loan was made will also incur a charge if the loan is written off. Where the individual is both a director/employee and shareholder the amount written off is treated

as a dividend and we all know that dividends are pretty tax efficient. And, of course, dividends don't attract National Insurance (NI) – or do they?

HMRC have been arguing for some time that the amount written off will attract Class 1 NI if it is remuneration or profit derived from an employment and a recent case has supported this argument.

The individual concerned was the majority shareholder and a director of a family company and had loans written off in his favour. The taxpayer argued that the loan waivers were not derived from his employment. He had received a substantial salary in his role of managing director and the loans were not withdrawn in regular sums at regular intervals - hence the argument that they were not on account of remuneration.

However, the Tribunal found there was no evidence to support the argument that the waiver of the loans was a payment in his capacity as a majority shareholder. Minutes from the Annual General Meeting showed that the shareholders had not been consulted on the waiving of the loans and that the waivers were approved by the directors.

So the principle is clear. The loans must be made because the individual is a shareholder to avoid NI. As ever, paperwork is king! So if you need help with dotting the 'i's and crossing the 't's, please do get in touch.

Van-tastic

In April 2005 a new regime was introduced for employer provided vans, otherwise known as the company van. These changes removed many van users from the charge. However, conditions do apply, so it is essential that these continue to be observed to avoid a tax charge arising.

There is no taxable benefit charge where the 'restricted private use' condition is met. Where the condition is not met, the benefit charge for unrestricted private use is £3,000. Where an employer provides fuel for unrestricted private use an additional fuel charge of £550 also applies. In each case the actual tax due on the benefits will depend on the individual's tax rate position.

To decide whether the van is taxable or tax free, the law lays out a number of conditions:

- the terms on which the van is made available to the employee prohibit its private use otherwise than for the purposes of ordinary commuting (or travel between two places that is for practical purposes substantially ordinary commuting) and
- neither the employee nor a member of their family or household makes private use of the van other than for those purposes and
- the van is available to the employee mainly for use for the purposes of the employee's business travel.

The first point means that HMRC will usually require proof that private use of the van is generally prohibited. A written policy or inclusion in the contract of employment is generally acceptable. More problematic can be the concept of 'ordinary commuting'. At its simplest this can mean home to office but 'ordinary commuting' has a special meaning for tax purposes that can be complex and different for each driver.

The second point is a question of fact. How do you prove the actual usage of the van without a mileage log?

The third point means that the van cannot be used for commuting purposes alone.

HMRC are starting to look very closely at company vans, so it may be a good time to review policies to ensure there is no trouble with the tax authorities. If you would like any help in this area, please do get in touch.



I'm late... for a very important date!

New late filing and late payment penalty rules come into effect from 6 April 2011 for the Self Assessment (SA) returns for income and capital gains tax. These are generally a change to the existing rules rather than being a new initiative in UK tax law. The changes are an element of a wider programme of tax administration reform undertaken in recent years which seeks a more streamlined and uniform approach across the full range of UK taxes.

New rules will eventually come into effect for all types of tax return as well as the SA returns. This will include PAYE, Construction Industry Scheme (CIS) and corporation tax returns. However, the implementation dates vary and are to be phased in over a number of years. For example, whilst this article considers SA returns only, new late return penalty rules also apply to CIS returns from October 2011.

The first SA returns to be affected will be the 2010/11 personal, trust and partnership tax returns. These are the tax returns due on 31 October 2011 if sent on paper and 31 January 2012 if filed online.

Late Returns

The rule that a personal/trust late filing penalty is the lower of £100 and the balance of tax due has been replaced.

Instead, the initial new late filing penalty regime will include the following:

- £100 penalty immediately after the due date for filing (whether or not the tax has been paid)
- daily penalties of £10 per day for returns that are more than three months late, running for a maximum of 90 days
- after six months the penalty will be the greater of £300 or 5% of the tax shown on the return
- after 12 months the penalty will again generally be the greater of £300 or 5% of the liability.

Significantly higher penalties can apply if the failure after 12 months is deemed to be deliberate. This can range up to 100% although reductions are often negotiable. However, it is clearly better to avoid being in this position by continuing to file on time.

Late payments

The new penalties (formerly referred to as surcharges) for late payment of tax on the SA returns are very similar to the old rules and will consist of:

- a penalty of 5% of the amount of tax still unpaid 30 days after the payment due date of 31 January and
- further penalties of 5% of any amounts still unpaid at six months and 12 months after the due date.

A suspension of late payment penalties may be arranged where the taxpayer agrees a time to pay arrangement (where a tax debt is paid over time) with HMRC, so if difficulties in meeting payments are anticipated it may be advisable to consider this route to prevent penalties from escalating.

In addition to the above - new late payment penalties for PAYE have been in force since 6 April 2010 and whilst these are not considered further here please do contact us if this or any other penalty matter concerns you.

A new clampdown

One of the Government's priorities is the simplification of the benefits system to prevent opportunities to commit fraud and make the system less prone to official or customer error.

Current estimates put annual revenue losses due to fraud and error in the welfare system at £5.2 billion or almost 3% of total expenditure. This is made up of £3.1 billion in benefits administered by the Department for Work and Pensions (2.1% of total expenditure) and £2.1 billion in HMRC administered benefits (8.9% of expenditure).

The new policy is based around five key elements: Prevent, Detect, Correct, Punish and Deter. The Government's zero tolerance to fraud will include:

- employing private sector firms on a payment by results basis to ensure adoption of cutting-edge private sector fraud prevention techniques
- redirecting resource to the front line to prevent fraud and error from entering the system in the first place, through enhanced checks and tougher sanctions for those even attempting to defraud
- recruiting over 200 new anti-fraud officers to sanction a further 10,000 fraudsters every year
- creating new integrated cross-departmental data matching and fraud investigation services
- introducing a system for rewarding members of the public who provide information that results in significant recovery of public funds
- responding to the growing threat of organised fraud through a new Identity Fraud Unit and far tougher sanctions for those involved
- introducing a new mobile regional fraud taskforce to investigate each and every claim in high fraud areas, to increase the certainty of detection
- addressing the weakness of the current penalty regime by abolishing cautions as a penalty for fraud, increasing asset seizures, and introducing far tougher 'one strike' and 'two strike' penalties, and a new 'three strike' rule
- cleaning up two million claims to remove error and
- increasing the frontline support to help educate and support our customers to get it right first time.

It is hoped that these proposals will deliver a £1.4 billion reduction in fraud and error by 2014/15, with further significant savings beyond that date as longer term changes to the benefits system evolve.

Tax saving or tax draining

Much of the Budget 2011 statements have focussed on the impact of changes for business but now that 2011/12 is underway what changes impact on the individual tax payer?

The £1,000 increase in the personal allowance to £7,475 for those aged under 65 for 2011/12 represents the first step towards the Government's longer term commitment of increasing the personal allowance to £10,000. However, the decrease in the upper limit of the basic rate band (BRB) from £37,400 to £35,000 does mean that higher rate tax payers will not benefit overall.

The reduction in the BRB limit is likely to mean that there will be 400,000 more taxpayers (per HMRC estimates) tripping over into the higher 40% rate tax bracket in 2011/12 although 70% of these will still get the full benefit of the allowance increase without experiencing the full loss from the reduction in the BRB limit.

What about National Insurance changes?

When assessing the impact on individuals generally the changes in National Insurance Contribution (NIC) rates and thresholds for earned income whether employed or self employed also needs to be factored in. The threshold at which NIC starts to be levied has increased by £1,510 in 2011/12. This clearly offsets the additional 1% rate

rise in all NIC rates and for many, but not all, basic rate tax payers, it means there is no additional NIC cost in 2011/12.

In assessing the overall impact on individuals the Government impact report states:

'The increase in the personal allowance will remove the 880,000 lowest income taxpayers out of tax altogether, and around 23 million basic rate taxpayers will gain by £170 per annum on average.

There will be no significant change for the majority of higher rate taxpayers, but 1.75 million higher rate and additional rate taxpayers will have an average loss of £220 per annum. This includes those with incomes above £114,950 whose personal allowance will be tapered to zero, and therefore will not benefit from the increase to the allowance (approx 520,000 individuals).'

Changes ahead

Budget 2011 further announced the intention to raise the personal allowance for 2012/13 for those aged under 65 to £8,105 with a BRB limit of £34,370. Fixing the BRB limit at this level means that higher and additional rate tax payers will once more not benefit from the increased allowance.

The higher age related allowances available to those aged 65 and over and 75 and over will continue to be raised in line with the Retail Prices

Index. These higher personal allowances are reduced where income exceeds a statutory threshold set each tax year.

Does the 50% rate still apply?

The Government has stated that the 50% rate will remain in place for the time being.

The Chancellor also stated:

'I am clear that the 50 pence tax rate would do lasting damage to our economy if it were to become permanent. That is why I regard it as a temporary measure. Just as my Labour predecessor, the RHM for Edinburgh South West did when he introduced it.

I've said before that now wouldn't be the right time to remove it, when we're asking others in our society on much lower incomes to make sacrifices. For we're all in this together.

But I think it's sensible to see how much revenue it actually raises. I've asked HMRC to find out the truth when the self-assessment forms start coming in.'

It therefore looks like a case of watch this space! In the meantime do contact us if you require any further information on the impact of these changes.

Grant funding

Grants and other types of support are available for businesses and individuals from a number of bodies which include the government, local development agencies, local authorities or councils and charitable organisations. These grants are available for a number of different purposes and can provide a valuable source of funding to businesses.

Though many grants are typically aimed at small to medium sized businesses, larger businesses are still able to obtain financial support in many areas.

Start-up grants can be obtained to aid a new business from both government and charitable bodies. However, grants are also available to established businesses with eligibility often assessed upon your location, business size and industry sector.

Activities where support is available include:

- **Investment in capital to create new jobs or safeguard existing ones**
Grants within this remit are often still offered at a local level in order to promote local business growth.

- **Investment in environmentally friendly assets**
0% loans of £3,000 to £100,000 are available from the Carbon Trust.
- **Activities stimulating regional development**
Regional development agencies, often distribute European funding and offer a range of grants to businesses to develop their local area.
- **Investment in innovation, research and development**
Government grants are available to small and medium sized businesses for the research and development of technologically innovative products and processes which cover a proportion of costs directly attributable to the activities.
- **Employment and training**
A number of different types of grant are available ranging from those helping with the additional costs which may be incurred when employing disabled individuals to those which help with training and staff development expenditure.

Having identified a potential grant, the application process begins. The exact nature of the application will differ dependent on the type and source of funding being applied for.

A formal application will normally be preceded by discussion with the funding body, with the application itself often involving completion of relevant paperwork and the submission of a business plan. Grants applied for will often require match funding. This means that the business will have to fund a portion of the cost of a project. The percentage required varies so it is important to establish how much contribution may be required before making the grant application. Performance criteria may need to be met, with a potential claw-back where funds are not used for their designated purpose.

Applications to local authorities or Business Link can often be resolved within days or weeks. National and European bodies waiting times can sometimes stretch to months.

Further information on grants and funding that may be available to you can be found on the Business Link website (www.businesslink.gov.uk). If you are thinking about applying for grant funding or need help preparing a business plan please contact us to help you secure the best outcome as the overall pot for funding is often restricted, and so the competition between applicants for grant funding can be tough.

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