client BRIEFING

FOUR M
CHARTERED ACCOUNTANTS

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Changes to entrepreneurs' relief

Entrepreneurs' relief is important for all business owners, because the capital gains tax (CGT) charge on qualifying assets is only 10%. However, with the rate of CGT on most assets (other than residential property and carried interest) now down to just 20% for higher and additional rate taxpayers, missing out on entrepreneurs' relief has not been quite so serious since 6 April this year.

There is an overall lifetime limit of £10 million on the amount of gains on which you can claim the relief and can claim the relief as often as you like up to this level. Several types of assets can qualify for entrepreneurs' relief, including:

- All or part of a business owned by a sole trader or business partner, including the business's assets after it closed.
- Shares or securities in a company where the person making the disposal has at least 5% of the shares and voting rights.
- Shares acquired through an Enterprise Management Incentive (EMI) scheme after 5 April 2013.
- Assets the person making the disposal lent to their business or personal company for the trade.

'Disposal' in this context often means sale, but it could mean gift or even the liquidation of a personal company.

Directors of solvent companies

An important change made this April to entrepreneurs' relief hit directors who wind up a solvent company. They can no longer claim entrepreneurs' relief if they continue to work in the same trade as the company in the following two years after the liquidation. A record number of solvent companies were wound up in March in anticipation of this change.

This new rule will affect situations where a shareholding director sells the goodwill and other business assets out of their company and then puts the company into liquidation and takes the proceeds as a capital gain taxed at just 10%. In such circumstances, the buyer of the underlying business might well expect the outgoing owner to continue working as a consultant for a changeover period. Such an arrangement could now present a problem and you should be aware of this possibility when negotiating a deal. It is essential to get advice on this matter.

The business or company being disposed of must be trading in order to qualify for the relief. So most forms of property letting are excluded from entrepreneurs' relief. There can also be complications where a company owns a share in a joint venture with another

company. Indeed, there are some changes to this situation in the Finance Bill.

Sole traders or business partners must have owned the business for at least one year before the date on which they sell it. And if an owner is closing their business rather than selling it, they must have also owned it for at least a year before the closure. The business assets must then be disposed of within three years to qualify for relief.

For a sale of shares or securities, the seller must have been an employee, a director or some other office holder of the company being sold or one in the same group. Furthermore, for at least one year before the sale of the shares, the seller must have had at least 5% of shares and voting rights in the company, unless the shares were acquired through an EMI scheme.

Assets such as property that a business owner has lent to their business may also qualify for entrepreneurs' relief. They must have owned the assets but allowed the business partnership or personal company to use the assets for at least one year up to the date of the sale or the date the business closed.

This is a complex area, so do get in touch if you're affected.

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Tax on investments: new opportunities

Some people will now be able to have up to £17,000 of savings income tax-free. If they also receive dividends, up to £22,000 of their income could be tax free as a result of the new £5,000 dividend allowance.

There are essentially three main categories of income, savings income: which includes interest on deposits in banks and building societies; dividends; and other income such as earnings, pensions and rent. Tax rates are applied to different types of income in a defined order and that order can make a difference to the amount of income tax payable. The order for taxing income is earning and other non-savings first, then savings income and finally dividends.

0% rate band

The 0% starting rate of tax operates in a very specific way but it can be valuable. The maximum 0% starting rate band is £5,000 and is given on your savings income if non-savings income is no more than the personal allowance of £11,000. However, as non-savings income is taxed first, it will not be available at all if your non-savings income exceeds the personal allowance plus the £5,000 starting rate band – that is a total of £16,000. So if you have earnings/pension income of up to £11,000, you could receive £5,000 of savings income free of income tax.

Dividend income does not affect your entitlement to the savings income starting rate band because it sits on top of the savings income and is taxed last under the rules set out above. So you might have £11,000 of earnings, £5,000 of savings income and thousands of pounds of dividend income, but you would still qualify for the nil starting rate band and that would mean your £5,000 of savings income would continue to be taxed at nil.

There is also the new savings allowance. For basic rate taxpayers, it means that £1,000 of savings income will be tax free. Basic rate taxpayers could therefore potentially receive tax-free savings income of £17,000 (i.e. £11,000 personal allowance plus £5,000 taxed at 0% starting rate plus £1,000 savings income allowance). For higher rate taxpayers the savings allowance is reduced to £500, so the value of the tax relief given by the allowance is the same whether you are a 20% taxpayer or a 40% taxpayer. But if you have enough income to push you into the 45% tax bracket – even by just a pound – you lose the allowance altogether.

Spread the income

Basic rate tax is no longer deducted at source from interest on bank and building society accounts, etc. In addition, from April this year, the first £5,000 of a person's dividend income is tax free. So it makes sense to ensure that dividend income is spread around a family – where possible – to maximise the benefits.

If a couple find that one of them has a relatively low level of earnings/pensions, the lower income partner should consider holding the assets that generate the savings income and dividends to qualify for the extra tax-free cashflow.

Children under 18 – and sometimes even older – generally have relatively low earnings or other non-savings income. Any tax-free savings or dividend income they receive could be really tax-efficient. But don't forget, income that arises from a parental gift will be taxable on the parent if it comes to over £100 in a tax year.

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Loans rates rise for close companies

The rate of 'temporary' tax charged on loans to participators in close companies has been increased from 25% to 32.5%, with the increased rate applying to loans made on or after 6 April 2016.

Very broadly, your company will be classed as close if it is controlled by five or fewer participators – usually shareholders – or by any number of participators if they are also directors. If it were not for the close company loan rules, it would be very easy to take tax-free loans rather than taxable remuneration or dividends.

The tax treatment of a close company loan can be quite complicated because the employment income beneficial loan rules can also come into play. The 32.5% charge applies only to loans to participators, whether or not they are directors. However, loans to directors can also be taxed as beneficial loans regardless of whether they are participators.

You may think that this does not affect you, but it is surprisingly easy for a director's current account to become overdrawn – which would be treated as a loan. Remember that any personal expenses which have been paid from the company's bank account may be charged to your loan account. A typical strategy would be to cover the debt by declaring a dividend, but this will not be possible if company profits are insufficient – such as when a loss has been made. A better approach may be to vote salary and/or dividends at the start of the year so that you have funds available to draw upon.

Although it's a good idea to simply avoid overdrawing your loan account, there might be a situation when you really need a short-term company loan. With careful timing, you can make use of company funds for up to 21 months without having to pay the 32.5% charge. And if a charge is paid, timing is also important when it comes to repayment.

Doing this just before the company's year-end, rather than just after, results in a one year earlier tax repayment. If your spouse or partner is also a director and their loan account is in credit, then that balance could be used to offset your overdrawn account. However, for this to work, the two accounts must effectively be operated jointly.

Implications of Brexit for tax and business

The vote to leave the European Union has triggered a period of uncertainty for the UK economy. The UK's future relationship with the EU will not be clear for some time.

Community law currently affects national taxation in several ways and the implications for business tax will depend on the outcome of the negotiations between the UK and the EU.

In the days after the vote, former Chancellor George Osborne, looking to mitigate the potential risks of leaving the EU, trailed a cut in corporation tax to 15% or less. The new Chancellor Philip Hammond has not committed himself to this but intends to focus on measures to boost business investment and securing the ability of the financial services industry to do business in the EU. The Autumn Statement, normally in early December, may present new opportunities.

The UK hasn't formally left the EU yet and will only do so sometime after Article 50 is triggered. Constraints on some tax changes may then be removed. Speculation that the UK might abolish VAT is almost certainly unfounded. VAT generated £115 billion last year, which would be difficult to replace, and the continuation of VAT is likely to be a prerequisite for UK access to the European single market.

The extent to which UK VAT might diverge from EU VAT law, for example by extending the zero rate, is uncertain. Changes to the rules for supplies made to or from EU member states will probably be needed, and companies that sell directly to EU consumers may have to set up warehouses within the EU to continue to benefit from the current rules.

Leaving the EU should remove the prohibition on state aid to business, making it easier for the government to provide tax incentives. Customs procedures and duties may be imposed on businesses trading with the EU if the UK leaves the EU customs union without entering into a free trade agreement.

Although direct taxes are under national control, the government does currently have to ensure that corporation tax rules are consistent with EU law and the principle of fiscal neutrality. Outside the EU, a government might wish to favour UK companies fiscally. On the other hand, EU governments might discriminate against them.

Much could remain the same if the UK joins the European Economic Area. Structural change to UK tax is likely to be slow. We will keep you informed so that you can make best use of the opportunities that may arise and mitigate any difficulties.

Failure to prevent bribery offences

A recent case underlines how the failure to prevent bribery under the Bribery Act 2010 is an offence for which a firm can be severely fined, even if it acts in an exemplary way afterwards in reporting the offence to the authorities.

In 2012, Braid Logistics discovered potentially dishonest activities in connection with two contracts. An internal investigation revealed that:

- Invoices from a customer had been inflated to cover unauthorised expenses incurred by one of the customer's employees, including holidays, gifts and cash;
- Some Braid Logistics employees had also agreed to share profits with a customer on services it provided to the customer in return for orders continuing to be placed with Braid Logistics.

Braid Logistics dismissed those involved and voluntarily reported the case to the Crown Office. Despite these actions, the company ended up paying £2.2 million in settlement. What led to the payment was section 7 of the Bribery Act, which makes the failure to prevent bribery an offence. There is a defence available, but only if it can be shown that appropriate procedures designed to prevent bribery are in place.

The size of the settlement is a stark warning of the importance of having appropriate anti-bribery procedures. The scope of section 7 is very broad, and embraces the whole range of persons connected to a company who might be capable of committing bribery on the company's behalf. This could include contractors and suppliers.

Many firms are faced with supply chains where they can probably exercise control only over the main contractors. In such situations, the recommended approach is to follow appropriate anti-bribery procedures with the main contractor, and to request that each party in the chain then adopts similar procedures with the next party in the chain.

What counts as appropriate procedures will depend on the bribery risks faced by a business, and also its size and complexity. Few procedures will probably be needed for a small business facing minimal bribery risks. So it is important to research the markets you operate in and the people that you deal with, especially if entering into a new business arrangement. However, there is no requirement to employ consultants or lawyers to provide advice on the risks faced.

New state pension system in place

April marked the beginning of the new single-tier state pension.

Prior to 6 April 2016, the state pension system had long consisted of two components: a basic state pension (£119.30 in 2016/17) and, for employees only, an earnings-related pension. In addition was the means-tested Pension Credit, guaranteeing a minimum overall weekly retirement income of £155.60 (in 2016/17).

Unless you reached your State Pension Age (SPA) before April this year, that complicated structure will no longer apply to you. There is now a single-tier pension, pitched at a level just high enough (£155.65 a week maximum in 2016/17) to make the remaining element of Pension Credit largely irrelevant.

You will now need 35 years of National Insurance contributions or credits to earn the full single-tier pension, compared with 30 years for the former basic state pension. If you have a contribution record of fewer than 10 years by your SPA, you will get no single-tier pension. As a general rule, only your own contribution record counts – you cannot rely upon your spouse's or civil partner's contributions.

Once you start to receive the single-tier state pension you will benefit from annual increases based on the 'triple lock' (the greater of 2.5%, CPI price inflation and earnings increases).

The single-tier reform has come with many transitional provisions, the most important of which sets a "starting amount" of pension as at 6 April 2016, which is the greater of:

- what you accrued under the old rules; and
- the amount you would get if the new rules had existed when your working life began.

This calculation includes adjustments for periods of contracting out of the state second pension and its predecessor. In 2016/17 only 38% of those reaching SPA will receive the full £155.65 a week.

The new regime creates more losers than winners because its long term cost is lower than its predecessor. Generally, the higher your earnings and the further you are from your SPA, the worse off you will be. It is worth visiting the government pension projection website (www.gov.uk/check-state-pension) to see how much you might receive.

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