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business update

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How secure is your business?

HMRC has, for some time, required some businesses owing or likely to owe taxes and duties to provide security or to ensure payments are met. A facility to require security exists for most of the indirect taxes but it is most commonly used for VAT if the taxpayer has a poor payment record.

The most common form of security is a cash deposit held by HMRC or paid into a joint HMRC/taxpayer interest-bearing banking facility. Taxpayers may make withdrawals from these accounts but only with HMRC approval.

There was no similar obligation to require a security within PAYE or NIC legislation until April 2012. HMRC can now require a security in respect of PAYE but HMRC had previously inferred that this power would be restricted and only applied to cases of serious non-compliance.

A person who fails to comply with a requirement in PAYE regulations to give security commits an offence if the failure continues for a specified period. A person guilty of such an offence is liable, if convicted, to a fine not exceeding £5,000.

HMRC have now released a new 160 page guidance which states that security may be appropriate for high risk businesses and employers involved in:

- phoenixism - repeated insolvency and new company creation
- repeated refusal to pay until HMRC is about to start bankruptcy or liquidation proceedings and
- suspected tax fraud.

This does appear at first glance to back up the original intention of the rules. However, hidden away in the 160 pages is the following statement:

'With or without a link to previous business failures, or current non-compliant businesses, an employer with:

- 3 or more unpaid monthly remittances and
- debts of £10,000 or more

is suitable for security action. An end of year return (P35) that is still outstanding after a penalty has been issued on 19 September following the filing date is another factor to take into account.'

This seems to be moving the new law into mundane areas, not tax fraud. HMRC policy is that a warning letter will always be issued in non-compliance cases, so if you get such a letter please let us know as a matter of urgency.

Small firms face £2,000 fines for failing to file PAYE returns online

Anderson Barrowcliff LLP is warning that even the smallest businesses could face penalties of more than £2,000 a year for failing to file PAYE tax returns online and on time, under new proposals put forward by the taxman.

By October 2013, HM Revenue and Customs (HMRC) wants all employers to file pay and tax details of their employees online as wages are paid, rather than waiting until the end of the tax year.

HMRC is consulting on proposed penalties, with the consultation closing on 6 September 2012. Under the proposals, smaller firms could face penalties totalling more than £2,000 a year, and larger businesses would face even larger fines.

Nick Upton partner at Anderson Barrowcliff LLP said: "Although these proposals are still at the consultation stage, businesses of all sizes need to be aware that significant changes in the way they file their PAYE tax returns are likely to come into effect from next year."

"For many people, particularly owners of smaller businesses, this will seem like yet another burden on their time and resources. Seeking advice now on the implications for your business will help you to ensure that you don't get caught out when any changes take effect."

For further information, please use the contact details above to get in touch and we can direct you to the most appropriate member of the Anderson Barrowcliff LLP team to help deal with your query.

IN THIS ISSUE:

Principal private residence perils | Doubling up on reliefs | Auf Wiedersehen Pet | Maximising pension reliefs | Feeling generous...? | Changes to the VAT invoice rules

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Principal private residence perils

The capital gains tax (CGT) exemption for a gain made on the sale of your home (known as principal private residence (PPR) relief) is one of the most valuable reliefs from which many people benefit during their lifetime. Only a property occupied as a residence can qualify for the exemption. An investment property in which you have never lived would not qualify.

Occupation matters

'Occupying' as a residence requires a degree of permanence so that living in a property for say, just a couple of weeks with a view to benefiting from the exemption is unlikely to work.

HMRC appear to be continuing to take an interest in this particular area as there have been a number of recent tax cases.

Trading transaction?

In one case HMRC argued that the purchase and sale of a property was taxable as a trading transaction as it was purchased with a view to resale at a profit. Alternatively, if not a trading transaction they argued that PPR was not available due to the lack of occupation as a residence.

Since graduating in 1983 the taxpayer had always been employed full time as a software engineer but he stopped working full time in 2000 when he was made redundant and divorced by his wife. In 2003 he started to look for a property which could be modernised and become a family home for himself and his daughter.

He found a suitable property and he moved his household goods from storage to the property. His sister then died and he lost interest in the project and decided not to go ahead with it. Shortly after the property was sold realising a £50,000 profit.

Tribunal decision

The Tribunal accepted that the purchase was not made with a view to resell at a profit and so was not a trading transaction. However, they held that after the death of his sister, the taxpayer's stay at the property lacked any degree of permanence for it to qualify for PPR.

Establishing occupation

Another recent case considered occupation in circumstances where the taxpayers had made an election to HMRC to treat another owned property as their main residence for a period lasting just over a week. HMRC argued that the taxpayers had not moved into the other property, there was no internet access and they did not hold household insurance for this other property. HMRC successfully argued that any occupation of the property lacked a degree of permanence, continuity or expectation of continuity sufficient to justify its description as a residence. Therefore even though an election had been made it was void.

How we can help

The main residence exemption continues to be one of the most valuable CGT reliefs. However, the operation of the relief is not always straightforward nor its availability a foregone conclusion. Advance planning can help enormously in identifying potential issues and maximising the available relief. We can help with this. Please contact us if you have any questions arising from this article or would like specific advice relevant to your personal circumstances.

Doubling up on reliefs

Research and development (R&D) by UK companies is being actively encouraged by Government through a range of current tax incentives.

For the SME (small and medium-sized) company incentives are broadly two fold, an increased deduction for R&D revenue spending and a payable R&D tax credit for companies not in profit.

The R&D tax relief increases the amount a company can deduct for qualifying current spending on R&D from 100% to 225% for expenditure incurred on or after 1 April 2012.

Not everyone can claim R&D tax credits and not all expenditure qualifies. There are a number of conditions, the most important being:

- only companies can claim R&D tax credits. A separate scheme exists for large companies which is considered later in this article. R&D tax relief and the payable R&D tax credit is not available to individuals or partnerships
- the expenditure must be revenue and not capital expenditure
- the R&D does not have to be undertaken in the UK
- the spending must not be incurred in carrying out activities contracted to the company by another person (however a slightly different form of R&D tax credit may apply)
- the expenditure must not have been met by another person (if the R&D project is funded in whole or part by 'State aid' such as a government grant, none of the spending on that project can qualify for R&D tax credits).

However, it is first essential to determine whether HMRC would accept that the particular activities constitute R&D. The second is then making sure the relevant tax rules are met.

Example

Micro Ltd is an SME and incurs qualifying R&D expenditure during the year to 31 March 2013 of £100,000.

Assuming Micro Ltd is profitable, it will be able to claim a deduction in respect of its R&D expenditure for the year ended 31 March 2013 of £225,000. This will reduce its corporation tax liability by £45,000 (assuming a 20% rate), giving the company relief on the original expenditure at 45%.

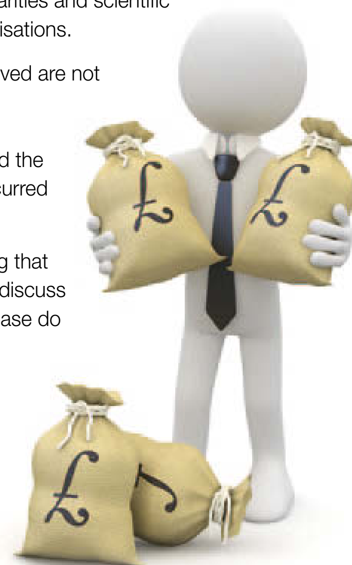
If, on the other hand, Micro Ltd is making losses, the £225,000 relating to the R&D expenditure can either be carried forward in the normal way against future trading profits or converted into a payable R&D tax credit. The rate of conversion is currently set at 11% and would generate a payment to the company of £24,750 (£225,000 x 11%) which equates to 24.75% of the original expenditure.

R&D tax relief for large companies

The large company scheme is similar to the scheme for R&D tax relief for SMEs but there are some key differences.

- The additional rate of R&D tax relief is 30% not 125% and ability to claim a payable R&D tax credit is not currently available.
- In the SME scheme a company gets tax relief for payments that it makes to subcontractors but in the large company scheme the credit normally goes to the company that carries out the work as a subcontractor. However, a large company may claim relief for subcontract payments made to non-taxpayers such as universities, charities and scientific research organisations.
- Subsidies received are not deducted from qualifying R&D expenditure and the expenditure incurred still qualifies.

If this is something that you would like to discuss in more detail, please do get in touch.



Auf Wiedersehen Pet

Self-employed people are allowed to claim tax relief for expenses that they incur wholly and exclusively for the carrying on of their business. Self-employed travel costs is an area HMRC have challenged over recent years, particularly if the person concerned runs their business from home. The issue is whether the travel costs from home to a place of work are ordinary commuting or business travel.

Further, what costs are included as business travel costs?

A recent case related to expenses claimed for accommodation of £32,503, subsistence of £4,094, and taxi fares of £4,080, by a well-known actor.

He normally lived in Cheshire and had agreed to appear in Billy Elliot. Rehearsals took place in London between December 2004 and March 2005, during which time he stayed at a friend's flat. He then leased a flat in London which was just one mile from the Victoria Palace Theatre and claimed the rental costs of this.

He argued that he was an itinerant worker throughout the whole period when he was in London, as he undertook other work in other places during the period as well as the Billy Elliot production. He argued that he could not have gone home to Cheshire every night after evening performances and had the option of staying in a hotel but opted to rent a flat because it was cheaper and there were less security issues than staying in a hotel. However, his base remained in Cheshire.

HMRC did not accept that the taxpayer was an itinerant worker and argued that London was his base for the period.

The Tribunal found the need for accommodation in London near the Victoria Palace Theatre was wholly and exclusively in connection with his profession as an actor. If he had stayed in a hotel then reasonable expenditure on subsistence in the hotel might have been accepted as incidental to the accommodation cost.

However, in this case he rented a flat and the expenditure on subsistence could not be treated as incidental to the rental of that flat in the same way as expenditure on food in a hotel where one is resident. In other words the subsistence, which included meals in restaurants, has to separately pass the test of 'wholly and exclusively' incurred.

Unfortunately there was no clear analysis of subsistence costs such as how many meals in restaurants were included. Nor was there any record of where they were eaten or whether any of these meals involved other members of the cast or of the production team, so no deduction could be allowed. For similar reasons, the taxi fares were disallowed as well.

What is clear is that good records are essential for any business claim and the lack of such records may hinder genuine business claims even where there is no challenge as to whether it constitutes business travel.

Maximising pension reliefs

In theory there is no limit on the amount that can be paid into a pension scheme for an individual whether from their own resources or from another party such as an employer. However, there are rules which limit:

- the income tax relief that can be obtained on contributions made and
- the maximum amount of pension savings that benefit from tax reliefs before an immediate tax charge is levied.

The amount that an individual can pay into their schemes and obtain income tax relief on is the greater of £3,600 or 100% of their earnings. This restriction does not apply to employer contributions.

The Annual Allowance (AA) is the maximum total amount that can be paid by an individual and other parties such as an employer into an individual's pension schemes before a tax charge arises. Since April 2011 this has been set at £50,000.

Where actual contributions for a tax year exceed the AA, the excess will generally be charged on the individual at their top rate of tax. In a defined benefit scheme, individuals accrue a right to an amount of annual pension when they retire. This right does not necessarily equate with the contributions made by themselves and their employers. Therefore the rules require a notional value of contributions to be computed which are then subject to the excess rules.

However, it is possible to look back at contributions made in the previous 3 years to see if you have any unused AA that can be used to shelter a large contribution in the current year.

Case study

Michael is a director and controlling shareholder in his company AVB Limited. He extracts a salary of £10,000 and takes additional income in the form of dividends from the company. The year ending 31 December 2012 is set to be a very profitable year for the company and Michael is considering topping up his pension by having the company make a larger contribution to his scheme than normal. He also expects that the next few years will be equally as profitable.

The company has made annual contributions into Michael's pension scheme each December and the scheme operates on a calendar year basis. The contributions are therefore allocated to each tax year based on the accounting period which ends in the tax year as follows:

Accounting period		Tax year
December 2009	£25,000	2009/10
December 2010	£50,000	2010/11
December 2011	£25,000	2011/12

An action plan

When looking at the maximum that can be paid into the pension scheme for 2012/13 Michael will have a current AA of £50,000 plus unused capacity of £50,000 (£25,000 from 2009/10 and £25,000 from 2011/12) from the earlier 3 years. This means that the company could pay a contribution of £100,000 in December 2012. This would use the current £50,000 AA for 2012/13

and then the unused capacity brought forward of £50,000. This course of action will not result in a tax charge for Michael and the company will obtain corporation tax relief on the contributions paid in the year to 31 December 2012.

Alternatively, the company could pay a contribution of £75,000 which would use up his current £50,000 AA for 2012/13 and the unused capacity of £25,000 brought forward from 2009/10. This should be considered if he wishes to avoid any entitlement to allowances being lost as the 2009/10 capacity cannot be carried forward to 2013/14 and the current year AA has to be used first.

In the following year a further £75,000 could be paid using up his 2013/14 AA and the unused 2011/12 AA. For years after that, payments would be limited to £50,000.

As you can see the rules are a little complicated but with careful planning it is possible to maximise this key relief.

Feeling generous...?

A new tax relief scheme has been introduced for individuals and companies who make gifts of what are termed 'pre-eminent objects' for the benefit of the public or the nation. The date that the scheme will come into force is yet to be announced.

Pre-eminent object

This is where an object has a significant national or local, scientific, historic or artistic interest.

Examples include:

- pictures
- paintings
- books
- works of art
- scientific objects

The relief will be set at an overriding scheme limit maximum of £30 million per annum and so some offers could be rejected if the limit for that year has been exceeded.

Who can qualify?

Any individual or company which has legal and beneficial ownership of the relevant asset. Assets that are owned jointly will not qualify.

Tax relief

Individuals will receive tax relief at 30% of the agreed value of the object. The relief can reduce their liability to income tax and any capital gains tax in the tax year of the registration offer and in any of the four following tax years. The precise allocation will depend upon the terms agreed and accepted by the taxpayer.

Companies will receive tax relief at 20% of the agreed value of the object and the tax reduction can only be made in the accounting period in which the registration offer falls.

The gifts themselves will be exempt from inheritance tax and capital gains tax.

Changes to the VAT invoice rules

Limited changes to the current UK VAT invoice rules will come into force on 1 January 2013 to ensure that the UK complies with the European Council Directive.

The changes aim to assist businesses by removing certain obstacles to the use of electronic invoices, simplifying a number of existing VAT invoicing requirements and removing some existing administrative burdens associated with VAT invoices. The changes required to UK VAT law are minimal because in many cases the rules being introduced across the EU reflect the current UK VAT invoice rules.

The simplified VAT invoice

One key area of change concerns the use of the simplified VAT invoice. Currently, HMRC allows retailers to use a less detailed invoice where the total of the supply (in general terms sale) does not exceed £250. The administrative advantage here is that the retailer's invoice contains far less information than is required on a full VAT invoice, whilst still providing the customer with sufficient VAT information for their purposes.

The change that is being introduced will extend this option to all VAT registered businesses making taxable supplies in the UK to a taxable person where the value does not exceed £250.

Other changes

Additionally, there will be a technical change to the rules surrounding the following types of supplies:

- exempt supplies
- margin scheme supplies
- reverse charge supplies
- self-billed supplies

At present, there is a requirement to provide a reference to support the VAT treatment which can be relevant UK or EU legislation or some other reference that explains the treatment.

From 1 January 2013, the aim is to simplify and harmonise the use of references across the EU, so the following descriptions must be used:

- for exempt supplies – exempt
- for margin scheme supplies – 'margin scheme: works of art', 'margin scheme: antiques or collectors items', 'margin scheme: second-hand goods', 'margin scheme: tour operators', as appropriate
- for reverse charge supplies – reverse charge
- for self-billed supplies – self-billing

Further harmonisation changes to European law may affect those trading with other EU member states.

If you have any concerns about these changes please contact us to discuss further.

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