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business update

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Exit from the EU

The EU referendum result will have significant long term economic consequences for the UK and many areas of law will need to be adapted to the new era. What are the possible tax consequences of the UK ceasing to be a member of the EU?

In the short term there will actually be no changes. EU influence on our tax system continues to apply as it did before the referendum and is likely to continue to apply for at least two years after the UK notifies the European Council of its intention to withdraw from the EU.

Included in this edition are some of our thoughts on the tax consequences of Brexit.

Of course, the nature of the changes will depend on the system adopted for trade between the UK and the EU. At one end of the spectrum is the 'Norwegian model' which is closest to the UK's current relationship with the other EU member states. At the other end is simply to rely on membership of the World Trade Organisation which would mean the acceptance of tariffs on the trade of goods but with caps on those tariffs.

We will continue to inform you of significant developments that may affect you and your business and help you manage the opportunities and threats that may arise in the next few years.

AUTUMN 2016

Have you paid the correct amount of tax?

In May 2016, the National Audit Office (NAO) published a report into the quality of HMRC service for personal taxpayers. The report highlighted serious shortcomings in the service which could have meant some taxpayers paying the wrong amount of tax.

In 2010, HMRC set out on a plan to reduce costs with a main focus on reducing the annual running costs of personal tax operations by £193m. As part of its charter, HMRC pledges to provide taxpayers with a helpful, efficient and effective service with an obligation to provide an acceptable standard of service. The NAO looked at whether HMRC managed to maintain this level of service whilst implementing their cost cutting changes.

The report found that up to 2013/14 HMRC succeeded in reducing costs by £111m but also maintained or improved their customer service performance. HMRC began introducing new digital services from 2011/12 and expected that this would reduce demand for contact with taxpayers so personal tax staff were cut by a quarter in 2014/15. But the fall in demand did not happen and HMRC did not have contingency plans to deal with the high levels of customer service requests.

To try and improve the service on the tax helpline, back-office staff were moved to call centres. These back-office staff had been maintaining PAYE tax records and investigating outstanding discrepancies in these records. The reduction in staff dealing with these reviews meant that the cases of outstanding discrepancies nearly doubled from 2.4m in March 2014 to 4.6m in March 2015. The NAO report highlighted that 3.2m of these were high priority cases which therefore meant there was a risk that these taxpayers would have paid the wrong amount of tax. The end result was that HMRC had to recruit 2,400 additional staff in the autumn of 2015.

HMRC are introducing more digital services in the next few years but the NAO report states that HMRC have learnt from their experiences of the past.

If we do not currently manage your personal tax affairs and you have had problems dealing with HMRC or believe that your tax may have been calculated incorrectly then please do not hesitate to get in touch.

IN THIS ISSUE:

Directors and auto enrolment - common sense prevails

It has taken a long time to sort out but after several years of lobbying by professional accountancy bodies and others, the government has provided a sensible set of rules on the question of whether directors are required to be enrolled into an employer provided pension auto enrolment scheme. The latest development has been the issue of legislation to provide the company with the ability to opt to exclude directors from auto enrolment. This will provide comfort for many employers; particularly small employers who have yet to go through the auto enrolment process.

Prior to the latest change, directors could be removed from the requirement to be auto enrolled if they did not have a written or implied contract of employment. Many directors of small companies do not have written contracts but it is difficult to be definitive as to whether an implied contract exists.

If there are only directors in the company and it is not clear whether they have contracts of employment, there are two alternatives to choose if the company wants to minimise its auto enrolment duties:

Alternative A

The company could conclude there are no implied contracts of employment. There is no requirement for the company to have an auto enrolment pension scheme as there are no workers.

Although there are no auto enrolment duties the company should confirm with The Pension Regulator that the company has no workers using the following link goo.gl/vPyag8. This will ensure the Pension Regulator (TPR) will stop issuing reminder letters (and threatening penalties) about the auto enrolment duties of the company.

Alternative B

If there might be contracts of employment, the new exception could be used. The company can choose to have an auto enrolment scheme and enrol the directors but is not required to. If it chooses not to have an auto enrolment scheme, the company would need to complete a 'declaration of compliance' after the date the company was required to have set up an auto enrolment scheme (the staging date) has passed. The declaration would show the directors as workers but that they had not been auto enrolled due to the exception.

What if the company has employees as well as directors?

If the company has employees, it will have a duty to set up an auto enrolment scheme. If the company concludes that neither director has a contract of employment, the directors are not enrolled as they are not workers. If the company concludes the directors have contracts of employment, the company can decide to not enrol them by applying the exception.

Take care

Employers need to take care if they advise TPR that they have no workers or no-one to enrol and then take on an employee in the future. If the staging date has passed, auto enrolment duties may apply for that new worker from the date of their employment.

We can, of course, help you to decide what is appropriate for your circumstances.

Will your interest receipts be received net or gross of tax?

On 6 April 2016 a new allowance - the Savings Allowance - was introduced into our tax system. The Savings Allowance applies a new 0% rate for up to £1,000 of interest receipts for a basic rate taxpayer and up to £500 for a higher rate taxpayer.

A consequential change to the machinery of tax deduction by the entity paying the interest has been made. The introduction of the Savings Allowance will mean that the majority of taxpayers will not pay tax on their interest. The government has therefore removed the requirement (from 6 April 2016) for banks and building societies to deduct tax from account interest they pay to customers.

However, in 2016/17 basic rate tax will still be deducted at source from some forms of savings income such as interest distributions from unit trusts and OEICs. The government proposes to remove this requirement from April 2017.

Of course if your interest income exceeds the Savings Allowance, there will be extra tax to pay and if you are a higher rate taxpayer, you are more likely to be in this position as the Savings Allowance is only £500.

So why can't my company get a tax deduction for a parking fine?

Your business makes lots of deliveries by van to clients and quite often drivers have to park on double yellow lines as there is no available parking nearby. The result is quite a lot of Penalty Charge Notices (PCNs) issued by the local authority or the police. Your drivers are instructed to avoid parking in such locations but they often have no choice if the business is to provide an efficient service to clients. Any chance of getting a tax deduction?

The short answer is no. The long answer is also no as G4S has found out in a lengthy judgement released by a Tax Tribunal in April 2016.

Tax legislation contains no specific prohibition for the deduction of fines so the courts have had to decide from time to time whether any principles apply for deciding whether a tax deduction is available. HMRC argued that the decision made in the Court of Appeal in Alexander von Glehn Ltd gave rise to a principle that:

- the purpose of a fine is to punish a taxpayer and
- the legislative policy behind the imposition of a fine would be diluted if tax relief were given.

G4S did not dispute the existence of this principle but claimed the PCNs they incurred for parking infringements were rather different in character to the penalty incurred in the von Glehn case. In that case the company was fined in the First World War for exporting goods to enemy territory. The fine was £3,000 – a considerable sum then and clearly meant to punish. G4S claimed its PCNs were of a different character from the public policy issues arising from 'trading with the enemy'.

The Tribunal did not agree with G4S. The purpose of the PCNs is to punish the taxpayer. The payment was at least in part a payment to meet its obligation to pay the fines as a consequence of breaking the law rather than being incurred for the purposes of its trade.

Despite this case, there will be instances where a tax deduction is available:

- If PCNs are attached to an employee's car or handed to the employee at the time of the offence and the business pays the fine, a tax deduction will be given to the business but the employee is taxable on the payment as employment income.
- If the 'fine' arises because a car has exceeded the paid for time in a private car park, this is simply an excess charge payable under the terms of the contract made with the car park provider. This will be allowable if incurred 'wholly and exclusively for the purposes of the trade'.

Tax after the EU referendum

A number of you have asked for our views on the effect of the UK leaving the EU. Many of these questions have concerned taxation. In this article we therefore provide some information on the possible tax consequences of the UK ceasing to be a member of the EU.

The main point to note is that many areas of taxation such as personal and corporate tax rates have been matters upon which the UK has been free to decide without reference to the EU. However, the prospect of exit from the EU may indirectly affect the rates set due to the perceived financial effects of Brexit by politicians. The likelihood is that such issues will be addressed in the Autumn Statement in November/December.

A potential benefit to business and business investors may arise post Brexit in changes to business reliefs. Reliefs such as R&D tax credits for SMEs have constraints placed upon them due to EU State Aid rules. Also, restrictions were placed on the eligibility conditions for the Enterprise Investment Scheme and related venture capital schemes in 2015 in order to ensure they complied with EU State Aid rules. Post Brexit, there will be freedom to amend these schemes.

VAT may be a tax which sees the biggest changes. VAT is a creature of EU law. It is a central principle of the EU that the harmonisation of VAT is essential to the achievement of a single market. The UK consumer sees evidence of the effects of this harmonisation in the form of the restriction on the UK government to reduce VAT rates on certain goods and services such as domestic fuel and power.

In theory, the UK could decide to abolish VAT and replace it with a sales tax on goods and services. This is extremely unlikely. VAT raises over £100 billion annually and the government will have enough other issues that will need to be dealt with.

However, it is likely that UK VAT law will become independent of EU law. Although a fundamental building block of VAT is the EU Principal VAT Directive, we have UK legislation which implements this – the Value Added Tax Act 1994 being the main source. UK legislation can be amended after exit from the EU to reflect different rates to goods and services without constraint.

A likely inevitable VAT consequence of Brexit will be changes to how businesses export and import goods to and from EU businesses. For example, when a UK business buys goods from EU businesses it makes an 'acquisition'. The transaction does not result in any VAT being payable – an entry in a VAT return being the only consequence unless the UK business makes exempt supplies. Post Brexit, the transaction is likely to be treated as an 'import'. Import VAT would be paid to HMRC at the time of importation. This would be reclaimed by the business on the next VAT return (unless the business makes exempt supplies), so the effect will be a cash flow issue compared to the current position.

How extensive the changes will be will depend on the negotiations to exit the EU and the system adopted for trade between the UK and the EU. Many options have been and will continue to be discussed. These changes may take several years to occur and please be assured we are here to help you with the issues that will arise.

More rates of tax for capital gains

From 6 April 2016, CGT rates have fallen from 18% to 10% for gains taxed at the basic rate and from 28% to 20% for higher rate gains. The tax rate will also reduce to 20% for chargeable gains of trustees and personal representatives. The new lower rates apply to most chargeable gains including shares and other financial assets but does not include gains which arise on residential properties. So, the availability of the CGT exemption for the main residence becomes even more important.

The amount of the chargeable gain is after the deduction of reliefs, losses and the annual exempt amount which is £11,000 for 2016/17.

The rate of CGT payable on gains depends on the level of the individual's taxable income and gains for the tax year. Where part of an individual's income tax basic rate band is unused and they have gains from residential properties, they can use the unused basic rate band in the most beneficial way to reduce their CGT charge. The individual can chose which chargeable gains are taxed at the lower rate of CGT, up to the unused amount. For these purposes, the unused amount is reduced by the amount of any gains that are taxed at the 10% rate under Entrepreneurs' Relief or Investors' Relief.

Investors' Relief was introduced for unlisted trading company shares issued to individuals on or after 17 March 2016 where the individual has no connection with the company. This new relief applies a 10% rate of tax to gains accruing the subsequent disposal of these shares as long as they have been held for three years from 6 April 2016.

Progress on alignment of Income Tax and National Insurance

The Office for Tax Simplification (OTS) have been looking at this topic and with further reviews proposed it looks like the government are keen to progress this issue.

Differences between income tax and NICs have been identified, by the OTS, as one of the top causes of complexity for small businesses so closer alignment between the two is likely to be welcomed by businesses.

The issues identified with the current system are that:

- it no longer supports the UK's flexible workforce and reward model or its diverse business structures
- its inherent complexity is not well understood by employers or individuals
- two individuals with the same gross income which is constituted differently can have different NICs outcomes and possibly be entitled to different benefits.

The OTS have made seven recommendations to achieve closer alignment in its report in March 2016. The government has asked the OTS to undertake further reviews on two of the recommendations. The two recommendations are:

1. **Moving to an annual, cumulative and aggregated (ACA) assessment period for employees' NICs on employment income similar to PAYE for income tax**

   The current calculation basis for NICs can create distortions as shown in the example below:

   Example

   For an employee who in 2016/17 has three, unconnected jobs, paid monthly, each earning £5,000 per annum, there would be no NICs due as the earnings are below the threshold. In contrast, an employee earning £15,000 from one job paid monthly would pay £832 NICs for the year.

   Moving to an ACA based system should resolve this issue.

2. **Basing employer NICs on whole payroll costs**

   Despite being calculated by reference to employees' pay, employer NICs do not impact on the contributory benefit entitlements of employees. The OTS proposal is to break the link of employer NICs with the calculation of individual employees' NICs and base the calculation of employers' liabilities on total payroll costs. A flat rate tax on total costs would be simple to calculate and an 'employment allowance' could remove many employers from any liability to the tax. For example a flat rate of 11.5% and an employer allowance of £115,000 would leave only 40,000 employers with a liability and raise the same revenue as at present.

The report on the two reviews is planned to be finalised before the Autumn Statement. The report will set out who might pay less and who might pay more (the 'gainers and losers'), and the benefits and challenges of an ACA system of employee's NICs and a payroll tax system of employer NICs including implementation and transitional issues.

Many employers and employees will look forward to some much needed simplification of the tax system.