2013 SUMMER NEWS

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RTI: a Really Terrible Idea?

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The problem was not really of the taxman's making: RTI is a necessary requirement of the new Universal Credit benefits system which is already being rolled out across the country. However, judging by the number of last-minute changes and clarifications of the HMRC guidance (three of which are described in this newsletter), we can only conclude that RTI was not properly tested before being imposed on small businesses.

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This newsletter describes these and other recent developments which might affect your tax affairs. The rules seem to become ever more complicated, and the risks of inadvertently doing something wrong and picking up a penalty increase every year. Whatever else happens, we will be keeping an eye on the changes and looking out for your best interests. If you need advice on tax, whether it's personal or business, we'll be happy to help. ●

Homes under the hammer

A second home can create a supplemental income for your family if you let it while you're not in occupation. The property may also produce a handy profit on sale, if you've held it for long enough to ride out the property slump. Obviously you, and any joint owners, must declare any income and gains from the property on your relevant personal tax returns.

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The taxman can access the Land Registry database to check up on all property sales in the UK, and has a database of all the properties for which stamp duty land tax was paid on the purchase. There are also tax information exchange agreements in place between the UK and many other countries, which allow data concerning property sales to be passed to the UK tax authority.

Anyone who has not declared their rental income or gains on sale can take advantage of reduced penalties if they register to make a disclosure, which must be done by 9 August 2013, and pay all the tax due by 6 September 2013. The disclosure must include any rental income generated by the property, not just the gain made on disposal.

We can help you check if you have already made all the relevant disclosures and claimed any reliefs due on the gain. If there are gaps in disclosure, a full and unprompted declaration is usually the best approach. ●

Take IHT to the limit

When you die your executors must pay inheritance tax at 40% on the net value of your estate. But what is the net value?

The executors can claim reliefs, exemptions and allowances. Up to 100% of the value of assets qualifying as business property or agricultural property is covered by a relief, depending on exactly how the property is held. Anything left to your UK domiciled spouse or civil partner or to a charity is exempt.

As well as the reliefs and exemptions, you deduct any loans and mortgages, owed at the time of death, to arrive at the net chargeable value of your estate. The first £325,000 of your net estate is then covered by your nil rate allowance, unless that has been wholly or partly used up by lifetime transfers.

Now, for deaths after the Finance Act 2013 is passed (expected to be mid July 2013), the deduction of loans will be subject to more restrictions.

Any loan must be deducted from the asset it was used to acquire. So if you increased the mortgage on your home to invest in your business, that 'business part' of the loan must be deducted from the value of the business and not from your remaining estate. However, the value of your business is likely to be covered by a 100% relief, so you don't benefit from the deduction.

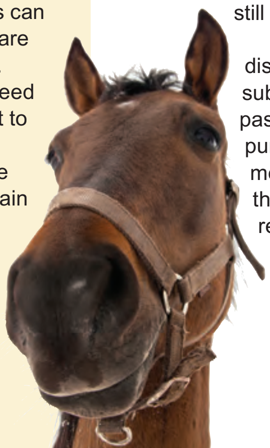
If the loan owing at death is not actually repaid to your creditor after death, that loan can't be deducted from your estate, unless there is some commercial reason for not repaying the loan.

These changes are likely to increase the net value of your estate and mean more inheritance tax will be payable. There may be other solutions to this IHT problem, so if you think you might be affected, we can help ●.

Horses for courses

'I could eat a horse' has taken on a new meaning in the UK in recent times. The European Commission has also been arguing with the Irish Government about horses – Ireland has allowed a lower rate of VAT to be charged on some supplies of horses and dogs, but the Commission says that lower rates can only be applied to animals which are intended for human consumption.

The Court of Justice has agreed with the Commission: if you want to ride an animal or love it as a pet, you have to pay the standard rate of VAT on it. But don't try to bargain for a discount in a pet shop by taking a knife and fork! ●



Great expectations

If you ask HMRC for advice on a tax matter, surely you should be able to rely on the answer – but it isn't that simple. For years, HMRC would do the decent thing, but only on their terms – if a tax officer, in possession of the full facts, gave an unequivocal ruling in writing which turned out to be wrong, HMRC would only apply the correct law from when they told the trader – they wouldn't ask for back tax. This was only a concession: if HMRC decided it didn't apply, it was hard to appeal.

Then a High Court judge suggested that EU law gave traders the right to force HMRC to stand by their answers – a legal argument called 'the protection of legitimate expectations' would prevent the authorities going back on what a trader could reasonably regard as a promise. The judge reckoned this could be used in the First-Tier Tax Tribunal (FTT), and many recent appeals have included it.

Now HMRC have established that only the Upper Tribunal can hear this kind of appeal, and the hurdle the taxpayer has to clear is very high – HMRC's behaviour has to be so unreasonable as to constitute an 'abuse of power'. In the case, a man had gone to a tax office to ask how to recover VAT on pre-trading expenses. He was given a telephone to ring the Advice Line, and – according to him, because there were no records – received misleading advice, leading him to register from the wrong date and lose the right to reclaim some VAT. The FTT accepted his version of events and held that he had a 'legitimate expectation', but HMRC overturned the decision on appeal and established that the FTT cannot consider this argument.

If you are not sure how to treat something for VAT, we can advise you – and we can suggest how to get a ruling from HMRC. ●

Near-shore havens?

Have you ever held a bank account, or other investment, in Jersey, Guernsey or the Isle of Man? Back in the day, the main UK banks offered accounts in their 'near-shore' island branches as means to pay interest to UK residents without having to deduct tax.

Under international pressure to stamp out tax avoidance and evasion, those island nations have agreed to automatically provide HMRC with details of all bank accounts and investments held by UK residents since 1999. Anyone who's held an account in those jurisdictions may receive a letter from their bank or contact about this new disclosure arrangement.

Having an offshore account doesn't mean anything is wrong, but any income should have been put on UK tax returns. If you are unsure whether you correctly declared everything, please discuss the matter with us. The taxman is encouraging people to declare their 'near-shore' financial interests and pay any tax due before 30 September 2013. The conditions relating to penalties and interest on unpaid tax are slightly different for each island, so care is required.

Any tax due in respect of these investments must be paid up front, and we can help calculate this. However, once the tax has been paid, taxpayers are required to make a detailed disclosure of their entire tax affairs, so we would need to review all their tax returns back to 1999. ●

Money for nothing?

People who sell over the internet may think that tax and VAT are very old-fashioned ideas – or may simply not have worked out how they apply. Not surprisingly, HMRC still wants a piece of the action.

A website offered goods at discounted prices. Customers subscribed for a 'Redsave pass' which was free for the first purchase, but then cost £19.95 a month until cancelled. It seems that many customers didn't realise that they were paying for it, because the company received a great deal of money in months when no goods were purchased. It didn't account for VAT on these receipts, claiming that it hadn't supplied anything.

The Tribunal confirmed that the 'right to a discount' was something that the customer had bought, even if it wasn't used, and that was VATable. The back tax owing was about £1m.

If you are selling over the internet, make sure you have thought through what taxes you need to account for – and if you are buying, make sure you read the small print! ●

Pension liberation

If you are short of cash, you may be tempted to ask your pension scheme to release your pension savings before your retirement date. There are a number of firms which claim to be able to help you achieve this goal (in return for a percentage of the released funds), but they rarely explain the tax implications. There are some sharks out there – police raids and arrests of some of the rogues were recently featured on the national news.

If you gain access to your pension savings before the retirement age set by your pension scheme (normally 55 or older), you will be liable to a 55% tax charge. This applies to all taxpayers, whatever their marginal rate of income tax. It also applies if you take a loan from the scheme and repay the funds back later. The firm that helps you access the pension funds will not pay the tax charge for you – it is always payable by the individual.

Pension funds can be safely transferred from one pension scheme to another. It is sometime sensible to do this to consolidate several small pension pots. But you should always seek advice from a qualified financial adviser who is registered on the financial services register, before making any decisions about moving pension funds. ●

Relax, don't do it

Real time information (RTI) is proving to be a bit of a nightmare in some quarters. All employers in RTI are supposed to send a full payment submission (FPS) report online to the tax office every time they pay employees, even for weekly or daily cash payments.

To make RTI manageable for small employers, HMRC has agreed that they can send the FPS report just once a month when they run the normal payroll on the computer. 'Small' in this case means there are fewer than 50 employees.

This relaxation is only supposed to apply where workers are paid weekly or more frequently, and the payroll is only processed monthly. However, HMRC is unlikely to penalise employers who pay monthly or fortnightly but ask their accountant to process the payroll figures at the end of the month.

The payroll must also be run before the end of the tax month, for example by 5 August where employees are paid in the period 6 July to 5 August.

This is only a temporary relaxation of the RTI conditions. From 6 October 2013 all employers will be expected to send in FPS reports on or before payment dates for all employees. We can help you get ready for this onerous new requirement. ●

Annual PAYE

RTI is a significant burden for many one-person and family companies. A way to reduce the costs of RTI administration is to pay the owner/directors just once a year, and apply for the PAYE scheme to be an annual scheme. You can do this by contacting the taxman's payment enquiry helpline on 0845 366 7816.

HMRC will register the PAYE scheme as an annual scheme if it meets these conditions:

- all the employees are paid just once a year on the same date; and
- the employer is only required to pay HMRC annually (ignoring Class 1A NIC).

Once the PAYE scheme is registered as 'annual' you can send in a FPS (full payment summary) for the month in which the employee(s) are paid, and indicate that is the final submission for the tax year. You then don't have to submit nil EPS (employer payment summary) returns for the other 11 months of the year when no payments are made.

However, there has been a little problem. Since the start of RTI the registration of PAYE schemes as 'annual' has not been fed through to the RTI system. This will be fixed soon, possibly by the time you read this. In the meantime you have to submit nil EPS returns for every month when employees are not paid. If you haven't paid anyone yet, it's not clear what HMRC will do about it.

If your PAYE scheme was registered as 'annual' before the start of RTI you should be in the clear. Nil EPS forms will not be required for the eleven months of the tax year in which no one was paid. ●

Sweet victory

The company which runs the Nectar points scheme accounts for output VAT on the money it receives from shops which award points to customers, but was told by HMRC that it couldn't claim input VAT on the cost of providing scheme rewards – the taxman said that it didn't 'receive the supply' of goods and services when collectors redeemed points, so it couldn't deduct any VAT in respect of the cost. The European Court of Justice appeared to support HMRC's view.

The Supreme Court has now decided that the tax has to be deductible – the 'economic reality' was that it was a VATable cost that was directly related to the earlier VATable sale of points, and it would be unfair to deny a deduction.

The facts are unusual, but there are two important principles. First, promotional schemes often create a VAT headache, because there are special rules for 'business gifts' and 'free supplies'. Second, if you pay for something to be supplied to someone else, you may not be able to claim the VAT on the cost – HMRC may use the same argument as in the Nectar case, and they might win.

If you are not sure whether or how you can recover VAT on promotional costs, we can advise you. ●

Charities Online

Do you help to run a charity or community amateur sports club (CASC)? If you do, you should check out the new service offered by HMRC called Charities Online. This allows the charity or club to submit claims electronically to claim back tax in respect of Gift Aid donations received.

The old system for reclaiming tax required a paper form (R68), which took HMRC at least 30 working days to process. The new online claims will be processed in 15 working days, so your charity will get the money faster. To allow charities time to switch over to the new system, the old forms will be accepted by HMRC until 30 September 2013.

The process for reporting donations has been simplified as well. For example individual donations of £20 or less can be aggregated up to a total of £1,000, and the sponsors of individuals taking part in sponsored events don't have to be listed separately unless one donor gives £500 or more.

We can be authorised to submit online claims on behalf of your charity or club, so ask us how we can help. ●

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