

Welcome to our monthly tax newsletter designed to keep you informed of the latest tax issues.

We hope you enjoy reading the newsletter and remember, we are here to help you so please contact us if you need further information on any of the topics covered.

Best wishes

Liz Elliot, Tax specialist

SHOULD LLPs INCORPORATE?

A consultation document has been published on an HMRC attempt to stop what they believe are artificial profit and loss allocation schemes involving members of LLPs (and indeed other partnerships) where some of the members are chargeable to income tax but others are not.

What they do not like is allocating to a limited company member of the partnership a greater share of the partnership profits than is justified, so as to take advantage of the fact that an individual pays tax at an effective top rate of 47% (45% + Class 4 NICs at 2%) whereas for a limited company it will often be only 20% if the profits are kept in the limited company, or 44.44% if they are paid out as a dividend (20% corporation tax plus income tax on the balance of 80% which is then effectively taxed at 30.55%).

With all limited companies at whatever profit level due to enjoy a 20% rate of corporation tax from April 2015 (and only 1% more than that from April 2014), it really begs the question as to whether there is any tax advantage in operating as a partnership. Incorporation for all partnerships could well be the way ahead, which will not be what the Treasury was looking for!

TAX CHARGE ON TAKING A LOAN FROM A CLOSE COMPANY

We touched on this in the last newsletter, and now we have more flesh on the bone so we can advise you on how to avoid the new tightening-up of popular arrangements which previously succeeded in avoiding any tax charge on a loan simply by making sure the loan is repaid within 9 months of the end of the company's accounting period.

If at least £15,000 is outstanding by a participator to the close company immediately before a repayment and at that time there is an intention to re-borrow from the company, and that intention is carried out, the amount repaid is ignored and the result is a tax charge.

That could catch common arrangements where all withdrawals from the company are treated as debits to the director's loan account and are then cleared before the 9 month limit by way of voting a dividend or salary.

That in itself should still work, as where a charge to income tax arises on the participator in respect of a reduction to the loan account by way of a dividend or salary that reduction is still taken into account.

However, the likely issue on this is that you will need to ensure correct paperwork is in place to identify the method of reducing the loan account both within the accounting period and the 9 months afterwards. That is something which often did not happen.

IS PROPERTY LETTING A BUSINESS OR A TRADING ACTIVITY?

This is often a moot point, but following a recent tax tribunal decision (*Elizabeth Moyne Ramsey v HMRC* UKUT266) we now know that it is a business for the purposes of claiming CGT roll-over relief on incorporation of a property letting activity. That means no immediate tax charge on incorporation.

That could be very handy if it becomes a good idea to own a property letting portfolio within a limited company. The tribunal held that whether a business exists for this purpose should be interpreted broadly.

NICs AND SELF-EMPLOYED ENTERTAINERS

This controversial issue revolves around the fact that whilst self-employed for income tax purposes, an entertainer is generally deemed to be an employed earner for NIC purposes.

Up for consultation is a choice of action to take effect from 6 April 2014, with the choices being:

- Do nothing - entertainers retain dual status for tax and NICs.
- Simplifying legislation within the Class 1 NICs regime.
- Moving entertainers' earnings into the Class 2 and 4 NICs regime like all other self-employed people

Not surprisingly, HMRC do not consider it is realistic to do nothing. It is a very important issue for entertainers as if the decision is to bring them all into the self-employed net for NICs they will no longer have earnings which count towards entitlement to earning-related contributory benefit – something that is vital to the majority of entertainers given that HMRC believe the average annual earnings are only £12,000 and they perform for an industry average of only about 13 weeks per year.

DO YOU LET PROPERTY FURNISHED OR UNFURNISHED?

This has always been an important distinction, as only furnished lettings entitle you to the valuable annual wear and tear allowance of 10% of the rents. Now it is definitely worth reviewing whether you could show the property is furnished given that the renewals basis for replacing items in commercial or residential properties let unfurnished ceased from 6 April 2013.

It has recently become apparent that it is not always too difficult to show that a property is let furnished. HMRC guidance is that a property is furnished if it includes some (but not necessarily all) items that a tenant or owner-occupier would normally provide in unfurnished accommodation. That vague statement is then amplified and indeed the 10% allowance should be claimable where the property contains sufficient furniture, furnishings and equipment for normal residential use.

TAX DIARY OF MAIN EVENTS FOR JULY/AUGUST 2013

<i>Date</i>	<i>what's due</i>
1 July	Corporation tax for year to 30/9/12
6 July	Forms P11D and P11D(b) for 2012/13 tax year, and where appropriate form P9D
19 July	PAYE & NIC deductions, and CIS return and tax, for month to 5/6/13 (due 22 July if you pay electronically); payment of Class 1A NICs for 2012/13 (22 July if you pay electronically)
1 August	Corporation tax for year to 31/10/12
19 August	PAYE & NIC deductions, and CIS return and tax, for month to 5/7/13 (due 22 August if you pay electronically)

COMPANY CAR ADVISORY FUEL RATES

These are reviewed each quarter on 1 March, 1 June, 1 September and 1 December. They have shown very little change in recent times, but the new rates from 1 June 2013 do show a reduction in some situations with the previous rates in brackets where a change applies:

engine size	petrol	diesel	LPG
1,400 cc or less	15p		10p
1,600 cc or less		12p (13p)	
1,401cc to 2,000cc	17p (18p)		12p
1,601cc to 2,000cc		14p (15p)	
over 2,000cc	25p (26p)	18p	18p

CHANGES TO PROCEDURES FOR HMRC FIELD OFFICER VISITS IN DEBT MANAGEMENT

The controversial issue of HMRC's debt management processes is set to undergo some welcome changes.

You may know from bitter experience that HMRC are only too keen to press for payment of tax debts without drawing breath and reflecting the particular circumstances. That could change to a degree as we are told we can look forward to the following:

- By August HMRC will provide a facility for taxpayers/agents to verify the identity of the Field Force Officer.
- Also by August, HMRC will provide a dedicated line for agents to call in stress situations when the Field Force officer is on the doorstep.
- By September, Collectors will provide information for taxpayers, setting out the legal rights of the taxpayer and obligations of the taxpayer and of the Field Force Officer.
- From September onwards Field Force Officers will be issued with IT providing them with access to up to date information.

GIFT AID IN CHARITY SHOPS

HMRC have highlighted the contents of their guidance on claiming Gift Aid on donations of goods to charity which are then sold by the charity, which perhaps suggests that the correct procedures have not always been followed.

You must get the procedures correct, and as an example Gift Aid applies only to gifts of money by an individual so if a person simply donates goods to a charity, Gift Aid does not apply. Charities cannot claim Gift Aid on donations of any physical items, such as clothes or books. However, in certain situations Gift Aid can be claimed by charities or community amateur sports clubs (CASCs) on the income from the sale of supporters' goods. That involves getting the paperwork right (sounds familiar?!) and that means the charity or its trading company asking the owner of the goods to donate the sale proceeds to the charity. If the owner agrees to do just that the sales proceeds go to the charity which can then claim Gift Aid on the net sales proceeds subject to all other Gift Aid conditions being satisfied.

Certain conditions need to be reflected in the agreement.

Please contact Liz Elliott, or a member of our Tax Team, if you would like to discuss any of the issues raised.

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