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LG News

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Offshore income and the RTC rule

HMRC are getting noticeably tougher on those who try to evade tax by hiding their assets or income offshore. They are increasing the size and range of penalties charged, and increasing the number of prosecutions of serious evaders.

Broadly, a UK-resident taxpayer has a responsibility to notify HMRC of any taxable offshore income they receive. Income is considered 'offshore income' if it comes from a territory outside the United Kingdom. It includes:

- interest from overseas bank or building society accounts;
- dividends and interest from overseas companies;
- rent from overseas properties;
- wages, benefits or royalties earned outside the UK.

New legislation, known as the Requirement to Correct (RTC), will dramatically increase the penalties for people who have not declared tax or declared the wrong amount of tax on their offshore income and gains.

The purpose of the RTC legislation is to require those with undeclared offshore tax liabilities (relating to income tax, capital gains tax or inheritance tax for the relevant periods) to disclose those to HMRC on or before 30 September 2018. This will allow HMRC to take the appropriate action, for example, the collection of tax, interest and any penalties due under the appropriate legislation currently in force.

30 September 2018 was chosen as the final date for corrections as this is the date by which more than 100 countries will exchange data on financial accounts under the Common Reporting Standard (CRS).

CRS data will significantly enhance HMRC's ability to detect offshore non-compliance and it is in taxpayers' interests to correct any non-compliance before that data is received.

To ensure there is an incentive for taxpayers to correct any offshore tax non-compliance on or before 30 September 2018, there are increased penalties for any failures to correct (FTC) by that date. The new FTC penalty is likely to be much higher than the existing penalties, with a minimum penalty of 100% of the tax involved.

If taxpayers are unsure whether they have undeclared UK tax liabilities that involve offshore matters or transfers, they should check their affairs and if necessary put things right before they become liable to the new FTC penalties that will come into force on 1 October 2018.

Wales ready for tax changes

The Welsh Government and the National Assembly for Wales take responsibility for some of the taxes paid in Wales in April 2018.

Three taxes in Wales are affected by the partial devolvement:

- Stamp duty land tax;
- Landfill tax; and
- Income tax.

Land transaction tax (LTT)

From 1 April 2018, Land Transaction Tax (LTT) replaces Stamp Duty Land Tax (SDLT) in Wales. LTT will be collected by the Welsh Revenue Authority

Inside this issue:

Wealth Management

(WRA). The Welsh rates and bands for LTT were published in October 2017.

The change means that HMRC will not accept SDLT returns for land transactions in Wales with an effective date of transaction on or after 1 April 2018.

The Welsh Revenue Authority has launched an online LTT calculator to help taxpayers work out the amount of LTT they will need to pay on Welsh transactions completed on or after 1 April 2018.

Landfill tax

From 1 April 2018, Landfill Disposals Tax (LDT) replace landfill tax in Wales. This will be administered by the WRA and payable by landfill operators in Wales.

Landfill site operators in Wales can register for LDT via the Welsh Government website.

Income tax

From April 2019, the UK government will reduce each of the 3 rates of income tax - basic, higher and additional rate - paid by Welsh taxpayers by 10p. The National Assembly for Wales will then decide the 3 Welsh rates of income tax, which will be added to the reduced UK rates. The combination of reduced UK rates plus the Welsh rates will determine the overall rate of income tax paid by Welsh taxpayers. Other aspects of income tax will continue to be decided by the UK government, and the tax will be collected by HMRC. Revenue from the Welsh rates of income tax will go to the Welsh Government.

If the National Assembly sets each of the Welsh rates of income tax at 10p, this will mean the rates of income tax paid by Welsh taxpayers will continue to be the same as that paid by English and Northern Irish taxpayers.

The National Assembly may decide to set different rates to reflect Wales' unique social and economic circumstances.

Finance Act 2018 changes affecting partnerships

Finance Act 2018, which received Royal Assent on 15 March 2018, enacts several changes affecting the taxation of partnerships, most of which apply for the 2018-19 tax year onwards. The changes will be relevant to general and limited partnerships, Limited Liability Partnerships (LLPs) carrying on business with a view to profit, and foreign entities classified as partnerships for UK tax purposes.

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Although HMRC believe there will be little impact for most partnerships, it will be important for partnership structures to review the rules and assess their likely impact.

Reporting requirements

Bureau Outsourcing

The legislation is clarified to ensure that the beneficiary of a nominee or bare trust arrangement will be treated as a partner. HMRC will expect that person to be named on the partnership return, as they are potentially liable to tax on their allocation of the profits of the partnership.

Where a beneficiary of a bare trust is absolutely entitled to any income of that trust consisting of profits of a firm, but is not a partner in the firm, they will be subject to the same rules for calculating profits and reporting, etc. as actual partners.

Under the current rules, a partnership is obliged to provide HMRC with details of all of its immediate partners and the allocation of profit or loss to those partners, on a partnership return. To ensure that under this approach the correct taxable income can be established for any ultimate beneficiary taxable in the UK, the rules are being amended such that there will be a requirement to include, for each of the 'participating' partnerships, the share of the partnership's profit or loss calculated on all four possible bases of calculation (UK-resident individual, non-UK resident individual, UK-resident company, non-UK resident company), unless details for all partners (and indirect partners) are included in the partnership statement.

If a partnership (the reporting partnership) is a partner in more than one partnerships carrying on a trade, profession or business, the legislation will provide that the profits or losses from each partnership must be shown separately, and separately from any other income or losses, on the reporting partnership's return.

Wills and Trusts

Clarification has been provided about the basis periods of indirect partners and the notional trade they carry on in an underlying partnership. This makes it clear that basis periods apply for all partners allocated trading results from a partnership, whether they invest directly or indirectly. This measure also deals with the timing of any cessation of trade.

UTR requirement relaxed

The rule requiring a Unique Taxpayer Reference (UTR) for each and every partner to be included in the partnership return is being relaxed. In the past this has been particularly problematic for investment partnerships with overseas investors. Under the new legislation, a UTR will no longer be required for partners where the partnership is making a return under the Common Reporting Standard (CRS) or under the Foreign Accounts Tax Compliance Act (FATCA). The partnership tax return will, however, need to include a statement that the relevant provisions have been met with regards to making a return.

Disputes

A new process is being introduced where a dispute arises between partners over how the profits are allocated (rather than the overall quantum of profits), which will allow disputes over the correctness of the allocation of profits (or losses) for tax purposes to be referred to the tribunal to be resolved. Disputes over the quantum of partnership profits will not be within the scope of the new process. The provisions require that the amounts of profits and losses allocated to partners in a partnership return are considered final for tax purposes, even where the person would not otherwise be chargeable to tax on the partnership profits. A partner will be able to appeal direct to the tax tribunal within twelve months of the date of filing of the partnership tax return. They will no longer be able to enter a different figure on their own tax return to that shown on the partnership tax return and leave it to HMRC to consider the issue.

This change will clearly have effect where there are disputes within a partnership and in particular where a partner has left a firm in acrimonious circumstances.

Accounts and Audit

NMW and NLW increases take effect

New rates for the National Minimum Wage (NMW) and National Living Wage (NLW) (aged 25 and over) apply from 1 April 2018, and employers must ensure that they implement them accordingly. The rates are as follows:

- 25 and over - £7.83 per hour;
- 21 - to 24-year-olds - £7.38 an hour;
- 18 - to 20-year-olds - £5.90 an hour;
- under 18s - £4.20 an hour; and
- Apprentice rate - £3.70 an hour.

Severe penalties may be imposed for failure to comply with NMW/NLW obligations. Broadly, the penalty percentage which may be imposed for non-compliance is now 200%. The maximum penalty is a hefty £20,000 per worker, although it may be reduced by 50% if the unpaid wages and the penalty are paid within 14 days.

For further information on the NMW, see the GOV.UK website at https://www.gov.uk/national-minimum-wage-rates.

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April questions and answers

Q. I have traded through a two-man partnership for many years, but my partner has recently announced that he has decided to leave. I intend to continue trading as a sole trader. We have agreed an outgoing payment, which includes amounts for various items but mainly consists of plant and machinery. What is the position regarding capital allowances?

A. Although the partnership will be ceasing and a sole trade commencing, the business will be treated as continuing for tax purposes if the same business is being carried on.

If this is the case, you will not need to make any adjustments for capital allowances purposes.

Whether the same business is carried on is a question of fact depending on the particular circumstances involved. HMRC's guidance in their Business Income Manual (BIM 80635) is a useful reference tool where there is a partial change in ownership.

With regards to capital allowances, CAA 2001, s 61 deals with 'disposal events and disposal values' and includes a table of events and the disposal values to use.

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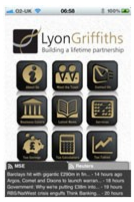

Broadly, if the same business is continuing, the change of ownership should not fall within the disposal events listed in s 61(1), which in turn means that no capital allowances event will take place. As the continuing business already owns the plant and machinery, no plant additions will be made.

Q. I own a property in the UK that is rented out but I live and work in Italy. The taxable profit from the rental property is less than £10,000. Will I have to pay UK tax on this property income?

A. Whether or not you will be liable for UK tax on this income will depend on your residence status for tax purposes and whether you are entitled to the personal allowance for the relevant year. If you are entitled to the personal allowance (£11,500 for 2017/18 rising to £11,850 for 2018/19), this will cover your rental income and no further tax will be due.

When you're UK resident you're normally taxed on the arising basis of taxation. This means that all your worldwide income and gains will be taxable in the UK. Therefore, even if your foreign income and gains have already been taxed in another country they will still be taxable in the UK and you must declare all of your foreign income and gains on your tax return.

If you're not resident in the UK and sell a UK residential property you may have to pay capital gains tax on the gains you make. See HMRC's guidance Capital Gains Tax for non-residents: UK residential property for more information on this.

Q. I am hoping to start my own business very soon, but I am not sure whether I should incorporate straight away or not. The business will require a substantial capital investment, so it is likely that it will make a loss in the first, and maybe even second, year of trading. Are the loss relief rules better for sole traders or companies in the early years of trading?

A. There are of course, various advantages and disadvantages of incorporating a business. You will need to weigh everything up and may come to the conclusion that you're best to carry on your business as a sole trader in the early years. This situation may be particularly relevant if you envisage making losses in the early years of trading, because you can carry back losses made in the first four years against personal income of the three preceding years, often resulting in a substantial refund of tax becoming due. However, don't miss out on the opportunity of forming a limited company later on when the benefits of company status may be more valuable.

April key tax dates

5 - End of 2017/18 tax year. Last day to use up your annual exemptions for capital gains tax, inheritance tax and ISA's

6 - Start of the 2018/19 tax year

14 - Return and payment of CT61 tax due for quarter to 31 March 2018

19/22 - PAYE/NIC, student loan and CIS deductions due for month to 5/4/2018 or quarter 4 of 2017/18 for small employers. Interest will run on any unpaid PAYE/NIC for the tax year 2017/18

30 - Additional daily penalties of £10 per day up to a maximum of £900 for failing to file self-assessment tax return due on 31 January 2018

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