LyonGriffiths

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LG News

March 2019

Volume 10 Issue 3

Making tax digital. The deadline is fast approaching.
Are you ready? Visit our website to see how it affects you.

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Inside this issue:

Over half of businesses unprepared for MTD deadline according to survey

A recent survey has revealed that more than half of business owners lack knowledge and understanding about Making Tax Digital (MTD) ahead of the upcoming deadline in April this year.

MTD is a key HM Revenue & Customs (HMRC) initiative which will require VAT registered companies with a turnover above the £85,000 threshold to submit their tax digitally on one of a number of suitable software packages.

Despite the importance of the change, many business owners still don't know how it will affect them.

The results of the survey found that 54.5 per cent of business owners feel they don't understand what Making Tax Digital is about, whilst 69.1 per cent of participants in the survey feeling they have not been provided with enough information about the forthcoming changes.

Surprisingly, 83.6 per cent of people claim to have not received any correspondence from HMRC regarding the implementation of MTD despite only three months until the deadline.

Making Tax Digital is designed to make the UK tax system run more effectively for taxpayers. From 1 April 2019, it requires businesses to keep digital records and submit VAT returns using compatible accounting software.

A survey from the Office for National Statistics last year revealed that around 2.67 million businesses are currently registered for VAT and or PAYE meaning a vast amount of people will be affected by the new changes.

If you are likely to be affected by Making Tax Digital and as of yet have not taken the adequate steps to prepare yourself for the deadline, it is vital that you seek specialist advice at the earliest opportunity. Contact us today to find out how we can help.

For more information please visit our website www.lyongriffiths.co.uk.

HMRC reaffirm income tax charge on winding up

HMRC have published Spotlight 47, which provides guidance on tax avoidance schemes that try to avoid the income tax charge on distributions when a company is being wound up.

In recent years, HMRC have endeavoured to prevent schemes being used by shareholders to take advantage of more favourable capital gains tax rates when extracting value from their company.

Until 6 April 2016, under arrangements known as 'phoenixism', an individual shareholder who intended to carry on the company's activities could arrange matters enabling them to wind up the company and receive the company's undistributed profits. The profits would be classed as capital distribution (subject to capital gains tax rates), rather than a dividend or other income distribution (subject to higher income tax rates). The individual would then carry on the same or similar activity, often using a newly-formed company.

To counter this perceived avoidance, in 2015 HMRC introduced Targeted Anti-avoidance Rule (TAAR) legislation to prevent individuals from gaining a tax

Cloud Accounting

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advantage by winding up companies, to make sure any distribution in the winding up is taxed as income, rather than being subject to capital gains tax.

Some scheme promoters have recently claimed that they can get around the TAAR legislation by making an artificial modification of the arrangements (for example by selling the company to a third party rather than winding it up). However, HMRC are adamant that such schemes do not work because:

- in many cases, the actual outcome is that the individual is receiving distributions in a winding up - as the individual carries on trading using a different vehicle these schemes are within the scope and purpose of the TAAR legislation; and

- phoenixism arrangements that claim to involve payments to shareholders taxed as capital instead of income are caught by the TAAR, or other provisions.

HMRC have said that they will investigate any attempts to avoid the income tax charge. If it is claimed that the phoenixism TAAR does not cover the arrangements, HMRC will consider whether the General Anti-abuse Rule (GAAR) applies to these schemes.

Penalties

HMRC have reaffirmed that a severe penalty regime exists in relation to such schemes - transactions after 14 September 2016 where the GAAR applies will be subject to a 60% user penalty. Moreover, for transactions entered into on or after 16 November 2017, any person who enabled the use of these sorts of schemes may be subject to a penalty as an enabler of an abusive scheme. The penalty amount will be equal to the amount of consideration they received for enabling the arrangements. The user may also be subject to penalties for filing an inaccurate return, with penalties of up to 100% of the undeclared tax.

For further information, see HMRC Spotlight 47.

Now is a time to ensure that everything is in order regarding directors' expenses and review loan account record-keeping procedures

Checking directors' expenses

As 31 March approaches, many companies will be getting ready to tie up tax matters for their financial year-end. Now is a time to ensure that everything is in order regarding directors' expenses and review loan account record-keeping procedures. This is particularly so as HMRC report that they commonly find errors in relation to directors' loan accounts when making routine reviews of company tax returns.

The statutory rules for computing taxable profits exclude companies from deducting expenditure unless it is incurred 'wholly and exclusively' for the purposes of the trade. As companies are separate legal entities that stand apart from their directors and shareholders they do not incur 'personal' expenses. However, many companies, particularly 'close' companies (broadly, one that is controlled by five or fewer shareholders), pay the personal expenses of their directors. Where payments, either made to or incurred on behalf of a director, do not form part of their remuneration package, these amounts may not be an allowable company expense and may not therefore be deductible for corporation tax purposes. In such circumstances it may be appropriate for these items to be set against the director's loan account.

Accounting disclosure requirements for directors' remuneration include sums paid by way of expense allowance and estimated money value of other benefits received other than in cash. The money value is not the same as the taxable amount, although this is often used in practice. This means the onus is on the director to justify why amounts not disclosed in accounts should be accepted as part of the remuneration package rather than debited to his or her loan account.

Where the expenditure forms part of the remuneration package it will be an allowable expense of the company and the appropriate employment taxes should be paid. Where the expenditure does not form part of the remuneration package the relevant amount will normally be debited to the director's loan account.

Cash transactions between the company and directors may have tax consequences. A charge may arise where a director's loan account is overdrawn at the end of the accounting period and remains overdrawn nine months and one day after the end of that accounting period (known commonly as the 'section 455 charge').

Proper records should be maintained of all cash and non-cash transactions between a company and its directors. Poor record-keeping may result in non-business expenditure incurred by the directors being incorrectly recorded or misposted in the company's records and claimed in error as an allowable expense.

Voluntary disclosures

HMRC have updated their online guidance on disclosing unpaid tax to include information on authorising an agent to deal with a disclosure made through the Digital Disclosure Service (DDS).

The DDS gives individuals and companies a chance to bring their affairs up to date in a simple, straightforward way. Anyone who owes tax on your income you must tell us about any unpaid tax now. Anyone who owes tax on income or gains must tell HMRC about any unpaid tax. They will then have 90 days to calculate and pay what is owed.

- How to make a voluntary disclosure to HMRC explains how individuals and companies not eligible for an HMRC campaign can make a voluntary disclosure to HMRC.

- Let Property Campaign: your guide to making a disclosure explains who can use the Let Property Campaign and how to make a disclosure to HMRC for unpaid tax. The online guidance has been updated to include details of a new form (form COMP1a), which can be used by clients to authorise agents to deal directly with HMRC about a disclosure made using the DDS. Agents should use the DDS to notify HMRC of a client's disclosure.

Employer responsibilities for tips

The tax and NIC treatment of tips will depend on how they are paid to the recipient.

Cash tips handed to an employee, or say, left on the table at a restaurant and retained by the employee, are not subject to tax and NICs under PAYE, so there is not responsibility for the employer to keep track of them and deduct tax or NICs. The employee is however, obliged to declare the income to HMRC and pay the tax and NICs due.

By contrast, if the employer passes tips to employees that are either handed to him (or the employees) or left in a common box/plate by customers, the employer will be responsible for operating PAYE on all such payments made. Tips will also be subject to PAYE if they are included in cheque and debit/credit card payments to the employer, or if they pass service charges to employees.

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The obligation to operate PAYE remains with the employer where the employer:

- delegates the task of passing the tips or service charges between employees, for example to a head waiter in a restaurant; or

- passes tips/service charges to a tronc (see below), but the tronc is not a tronc for PAYE purposes.

Troncs

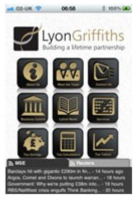
Where tipping is a usual feature of a business, there is often an organised arrangement for sharing tips amongst employees by a person who is not the employer. This type of arrangement is known as a 'tronc' and the person who is responsible for distributing the money is known as the 'troncmaster'. Where a person accepts and understands the role of troncmaster, he or she may have to operate PAYE on payments made. Broadly, under such arrangements the employer must notify HMRC of the existence of a tronc created and provide HMRC with the troncmaster's name.

There are no hard and fast rules regarding how a tronc should operate and HMRC will apply the PAYE and NIC rules to the particular circumstances of each tronc. Where payments made from a tronc attract NICs liability, responsibility for calculating the NICs due and making payment to HMRC rests with the employer. If a troncmaster is responsible for operating PAYE on monies passed to the tronc by the employer and has failed to fulfil his or her PAYE obligations, HMRC can direct the employer to operate PAYE on monies passed to the tronc from a specified date.

NICs

Legislation provides that any amount paid to an employee which is a payment 'of a gratuity' or is 'in respect of a gratuity' will be exempt from NICs if it meets either of the following two conditions:

- it is not paid, directly or indirectly, to the employee by the employer and does not comprise or represent monies previously paid to the employer, for example by customers; or
- it is not allocated, directly or indirectly, to the employee by the employer.



It is worthwhile checking that businesses treat tips and gratuities correctly. From time to time HMRC carry out reviews of employers' records to make sure things are in order for PAYE, NICs and separately for the National Minimum Wage (NMW). Any errors in tax and NICs treatment could prove costly.

March questions and answers

Q. My wife and I own various assets – some are held in individual names and others are held jointly. We are wondering whether we should 'equalise' the value of our assets so as reduce potential liability to capital gains tax at a future date.

Tax Solutions

A. As a general rule, so-called 'equalisation of estates' is often desirable for both capital gains and inheritance tax purposes. Broadly, this means that ideally each spouse/ civil partner should own assets:

- amounting to at least the value of the inheritance tax (IHT) nil rate band (currently £325,000);
- which, on sale, enables full use of the capital gains tax (CGT) annual exempt amount (£12,000 for 2019/20); and
- generating income sufficient to mitigate any exposure to higher rate income tax.

Although inter-spouse/civil partner transfers are not technically exempt from CGT the mechanics of computation are such that no CGT charge arises on such transfers. This treatment requires the spouses/civil partners to be married and living together. The spouse or civil partner receiving the asset may have to pay tax on any gain if they later dispose of the asset. Their gain or loss may be calculated from the date the asset was acquired by the original spouse/civil partner.

Transfers between spouses must be 'real' transfers and effected as if to a third party. This means all relevant documentation must be correctly completed.

Q. I run my own business, which is registered for VAT. If I purchase a new car for business use, can I reclaim the VAT I pay on it?

A. If you only use the car for business purposes, you may be able to reclaim all the VAT paid on the purchase price. However, the car must not be available for private use, and you must be able to show HMRC that this is the case.

'Private use' includes travelling between home and work, unless it's a temporary place of work.

You may also be able to claim all the VAT on a new car if it's mainly used:

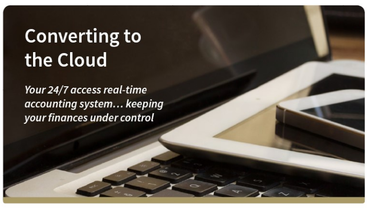
- as a taxi
- for driving instruction
- for self-drive hire

If you lease a car, you can usually claim 50% of the VAT. You may be able to reclaim all the VAT if the car is used only for business and is not available for private use, or is mainly used as a taxi or for driving instruction.

You can usually reclaim the VAT for buying a commercial vehicle (like a van, lorry or tractor) if you only use it for business.

Q. I bought a property several years ago to rent out. Over the last five years its value has risen from £120,000 to £220,000. I understand that if I sell it now, I would be liable to pay capital gains tax on a gain of £100,000. If I sell this property and re-invest the proceeds in another buy-to-let property would this mean I could delay paying the tax now?

A. Unfortunately not. Your plan to buy another house and thereby reduce the CGT payable on the first house is not allowed. 'Rollover' or 'holdover' relief from CGT is not available for investment properties, except for furnished holiday lettings, or compulsory purchase.



Download our guide "Converting to the Cloud" from our website

March key tax dates

13 - Spring Statement 2019

19/22 - PAYE/NIC, student loan and CIS deductions due for month to 5/3/2019

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