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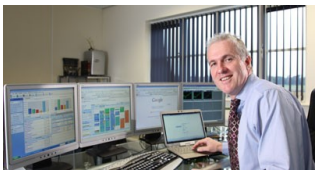

January 2020

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Inside this issue:

What does the General election mean for tax?

Following the General election on 12 December, Prime Minister Boris Johnson has confirmed that Sajid Javid remains as Chancellor of the Exchequer and no other changes at HM Treasury have been announced. The Prime Minister has however, confirmed that a more significant cabinet reshuffle will take place after the UK leaves the EU on 31 January 2020.

The Conservative manifesto set out a fairly limited number of tax pledges, with commitment to a triple lock on income tax, national insurance contributions (NICs) and VAT, which means there should be no tax hikes forthcoming in these areas. Moreover, the government has said it will raise the National Insurance threshold to £9,500 next year.

However, in the run-up to the election, the Institute of Fiscal Studies warned that some of the Conservatives' more ambitious manifesto pledges would require additional tax.

Conservative tax pledges set out in the party's manifesto 2019 are summarised as follows:

Personal tax - retain the triple lock on income tax, NICs and VAT, with rates frozen;

Employment taxes/NICs - NIC threshold to rise to £9,500 in 2020 (currently £8,632); interest rates on student loans will be reviewed;

IR35 - IR 35 legislation to be reviewed;

Capital gains tax - entrepreneur's relief for businesses is to be reviewed;

Inheritance tax - No changes announced at present;

Corporation tax - the man rate of CT will remain at its current level of 19% and will not be cut to 17% as previously announced;

Research & development (R&D) - tax credit rate will rise to 13% and there is to be a review of the definition of R&D

VAT - VAT to be removed from sanitary products;

Stamp duties - surcharge to be imposed on non-UK resident property buyers;

Digital services tax - this new tax will be introduced;

Tax avoidance - a new anti-tax avoidance and evasion law is to be introduced, doubling the maximum prison sentence to 14 years;

Business rates - business rates to be reduced and business rates relief made available for music venues and cinemas.

HMRC advisory fuel rates from 1 December 2019

HMRC have published company car advisory fuel rates for use from 1 December 2019.

The rates apply when employers reimburse employees for the cost of fuel for business travel in their company cars or require employees to repay the cost of fuel used for private travel. HMRC review rates quarterly on 1 March, 1 June, 1 September and 1 December.

The rates applying from 1 December 2019 are as follows:

Petrol and LPG

Engine size 1400cc or less: petrol 12p per mile, LPG 8p per mile

For further information including a free demo please call Alison Grocott on 01270 624445 or email alisongrocott @lyongriffiths.co.uk

1401cc to 2000cc: petrol 14p per mile; LPG 9p per mile

Over 2000cc: petrol 21p per mile; LPG 14p per mile

Diesel

1600cc or less: 9p per mile

1601cc to 2000cc: 11p per mile

Over 2000cc: 14p per mile

Current and older rates can be found on the gov.uk website at www.gov.uk/government/publications/advisory-fuel-rates

HMRC updated its online Check Employment Status for Tax (CEST) tool.....it is generally held that if CEST gives the required answer then it can be relied upon,

Another IR35 loss for HMRC

HMRC have faced another defeat in a tax case involving the IR35 intermediaries' legislation. In RALC Consulting Ltd v HMRC [2019] TC 07474, the First Tier Tribunal (FTT) allowed an appeal against HMRC's determination that IR35 applied because of a 'hypothetical contract' between various parties making up a service provider chain lacked the requisite 'mutuality of obligation'.

RALC Consulting Ltd (RALC) (the appellant), was the personal service company (PSC) of IT consultant Richard Alcock, who was the company's sole director and shareholder. During the tax years in question, RALC Consulting Ltd contracted with Mr Alcock's former employer Accenture UK Ltd (Accenture) and with the Department for Work and Pensions (DWP), a client whose projects Mr Alcock had previously worked on, to provide Mr Alcock's services working on a large IT project.

The contractual arrangements entered into by the appellant with Accenture and DWP were four-party chains, namely Mr Alcock, RALC, an agency, and the end clients. HMRC contended that as Mr Alcock had carried on working for his previous employer an 'expectation of continued work existed'. The FTT, however, did not agree with HMRC';s submission that the long history of Mr Alcock';s previous engagement and operation of the contract in practice led to an expectation that Mr Alcock would be provided with work every day during the course of an assignment, such that it amounted to a legal obligation.

The FTT looked not only at the terms of the contract but also at their application in practice and concluded that it was not satisfied on balance that sufficient ';mutuality of obligations'; existed between Mr Alcock and the end clients in the hypothetical contracts to establish an employment relationship. Since there was no minimum obligation to provide work and no ability to charge for just making himself available, the FTT found that the key elements of mutuality, in the work, or wage bargain sense, were missing, and therefore Mr Alcock could not be considered an employee.

The Tribunal was satisfied that Mr Alcock had substantial control over his contracts and control over how he performed his services. The FTT also accepted that Mr Alcock's engagements permitted him to provide a substitute but the end clients had the right to refuse to authorise any substitute proposed if they were deemed unsuitable. Therefore, while it was a genuine right of substitution, it was a fettered right subject to the approval of his clients.

The FTT concluded that the intermediaries legislation did not apply as the hypothetical contracts with the end clients indicated 'contract for services', meaning Mr Alcock would have been self-employed. HMRC's determinations, decisions, and notices were cancelled. The appellant was not liable to pay income tax and NICs assessed by HMRC. The appeal was allowed in full.

The outcome of the decision in this case rested largely on the FTT's interpretation of mutuality of obligation. HMRC's interpretation that where one party agrees to work for the other in return for payment, satisfies mutuality of obligation between the two parties, was dismissed by the Tribunal. The appellant's circumstances were such that they were not caught by the IR35 legislation, and in turn, this outcome now throws further uncertainty into the IR35 framework.

Soon after this decision was released, HMRC updated its online Check Employment Status for Tax (CEST) tool. Whilst the tool does have flaws, it is generally held that if CEST gives the required answer then it can be relied upon, at least until circumstances change or it is challenged by HMRC. But if CEST does not give the required answer then an employment contract review is recommended.

Business mergers and changes of ownership – payroll issues explained

In the December 2019 issue of Employer Bulletin, HMRC set out the action required to avoid any problems when merging or changing ownership of a business, to ensure all employees' payroll details are transferred to the new business.

When a business merges or changes ownership, employers have to contact HMRC to confirm if the business change should be treated as a merger or a succession. This affects whether the business can continue to use its current employer reference or needs to apply for a new one.

HMRC have identified that in a small number of cases, after an employee has moved to a new employer reference because of a business change, previous pay and tax details are sometimes incomplete on the new payroll record. As a result, new tax codes are issued based on incorrect information which can cause financial difficulties for employees until their records are corrected.

Where a business s is merging or changing ownership the following steps should be followed to ensure all of the employees' payroll details are transferred to the new business.

If HMRC provides a new employer reference or the employee is moving to a new payroll within the organisation with a different employer reference, the employer should send a Full Payment Submission (FPS) with leaving details, including the year to date pay and tax figures for the employer reference the employee is moving from. The employee does not need to be given a P45, but the employer must provide them with the pay and tax details up to the date they moved to the new employer reference.

Once the leaver FPS has been successfully sent to HMRC, the employer can send the first FPS for the new employer reference. Employment is restarted for each employee affected by returning their year to date figures to zero and include the employee information. Record the start date for the new payroll, indicating on the starter declaration, C for BR codes or codes starting with a D prefix and B for any other code.

When operating the new payroll, calculate and deduct PAYE and NICs from any payments you make to the transferred employee from the date they moved payrolls. If using a cumulative tax code use the pay and tax details from the old employer reference.

The last FPS from the old employer reference must be submitted before the first FPS for the new employer reference.

If the employee moves to a new payroll under the same employer reference, the employer continues to operate PAYE and reports payroll information under the same employer reference.

When a business merges or changes ownership, employers have to contact HMRC to confirm if the business change should be treated as a merger or a succession.

January questions and answers

Q. I am the sole director and shareholder of a limited company, which has been trading for many years. Last year, I took an extended holiday and travelled around the world with my wife. We were away for twelve months in total. Whilst I was away the company continued to collect outstanding payments, but it did not receive any other income. Now that I am back, I have taken on another director/shareholder (50%) and company trading has resumed. Should I have informed HMRC that I was going away and how should the losses in the period of temporary non-trading be treated?

A. According to the HMRC Business Income Manual (para BIM80500 onwards), your 'intention' to continue to trade at a later date will be an important factor in deciding whether there was a cessation. The Manual states that if:

'...the new activity is similar in scale and nature to the old, it is relevant to look at all the circumstances in which the break occurred, including the length of the break and the intentions of the business proprietors' (BIM80580).

A mere decision to wind down or dispose of the business does not of itself amount to a permanent discontinuance if trading activity in fact continues after the decision (J & R O'Kane & Co v CIR [1922] 12TC303).'

If HMRC rule that the old trade did not cease, and therefore a new trade has not commenced, then any losses can simply be carried forward and set off against future profits from the same trade. Also, if it is decided that there was no cessation of trade, there is no requirement to notify HMRC.

Q. My employer has agreed to give me an interest-free loan to purchase my annual rail fare ticket. The season ticket is £5,000. Will I have to pay tax on the loan?

A. Strictly, the taxable benefit on cheap or interest-free loans is the difference between any interest paid and the interest payable at the 'official rate' (currently 2.50%). However, there is no charge where the total of all beneficial loans made to an employee do not exceed £10,000 at any time in the tax year.

You should note that tax is charged on the amount written off of any loans, whether or not the recipient of the loan is still employed.

Q. Can the annual capital gains tax (CGT) exemption be utilised against a capital gain that qualifies for entrepreneurs' relief?

A. The short answer is yes it can.

If you're entitled to entrepreneurs' relief, qualifying gains up to the lifetime limit applying at the time you make your disposal (£10 million for disposals on or after 6 April 2011), will be charged to CGT at the rate of 10%.

If your qualifying net gains exceed the lifetime limit applicable to the time you make that disposal, no further relief is due and the excess over that amount is wholly chargeable at the normal rate of CGT at the time your gains accrue. The annual exempt amount is allocated in the most beneficial way, so is set first against gains having the highest rate of CGT. If you make a subsequent business disposal in a later year which qualifies for entrepreneurs' relief, the total relief (for all years) is still limited to your lifetime limit. Any gains exceeding that limit are wholly chargeable at the normal rate of CGT.

See the HMRC factsheet HS275 for further details.

January key tax dates

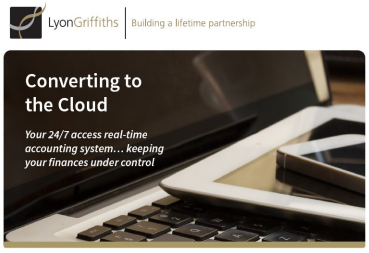
1 - Due date for payment of Corporation Tax for the year ended 31 March 2019

14 - Return and payment of CT61 tax due for quarter to 31 December 2019

19/22 - PAYE/NIC, student loan and CIS deductions due for month to 5/1/2020 or quarter 3 of 2019/20 for small employers

31 - Deadline for filing 2019 Self Assessment personal, partnership and trust Tax Returns - £100 first penalty for late filing even if no tax is due or tax due is paid on time

- Balancing self assessment payment due for 2018/19
- Capital gains tax payment due for 2018/19
- First self assessment payment on account due for 2019/20
- Interest accrues on all late payments
- Half yearly Class 2 NIC payment due
- Further penalty of 5% of tax due or £300, whichever is greater for personal tax returns still not filed for 2017/18
- 5% penalty for late payment of tax unpaid for 2017/18 self assessment



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