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NEWSLETTER

On the way out

Additional tax relief

Many businesses already obtain 100% relief on plant and machinery expenditure but there are situations when the Annual Investment Allowance of £50,000 is simply insufficient. In recognition of this and to encourage investment in the current economic climate, an extra temporary first year allowance (FYA) of 40% is currently available instead of the normal 20% annual allowance.

The temporary FYA can be claimed on qualifying expenditure incurred in the 12 month period ending 31 March 2010 for a company or 5 April 2010 for individuals and partnerships.

The FYA will not apply for expenditure on integral features, cars, long life assets and assets for leasing. However it is available to any size or type of business entity so take advantage before it disappears.

And on the way in

PAYE penalties for late payment

Penalties are to be introduced for PAYE from 6 April 2010 where payment is late. The liability to a penalty will be based on a totting up procedure depending on the number of defaults during a tax year. A penalty will not be levied for the first default and may then be charged depending on the number of defaults on a rising scale from 1 to 4%.

Further, any tax which is still unpaid six months after the due date, may incur a further penalty of 5% and a further 5% can be levied after 12 months.

Please contact us if you require further advice on these matters.

SPRING 2010

A light at the end of the tunnel

In the current climate there will be a number of individuals faced with a potential loss of capital on private company shares. This may occur because they have had to sell at a low price or, as is more likely, the company is being wound up following cessation of the trade. So what relief is available?

A loss on a disposal of shares is generally an allowable capital loss for tax purposes. Whilst this is reassuring to know, this often means that there is no immediate relief if an individual currently has no chargeable gains. This is because a capital loss can normally only be relieved against current or future gains.

Relief against income

However, certain losses on shares can be relieved against general income rather than capital. This alternative treatment may provide tax relief more immediately and is also likely to generate a more substantial tax saving. This is because in 2009/10 both the income tax basic rate of 20% and the higher rate of 40% exceed the 18% capital gains tax rate. Further if the loss is triggered in 2010/11, it could even save 50% income tax.

The taxpayer has the choice to relieve any such qualifying loss against income in either the same tax year (for when the loss is established) or the preceding tax year or both.

The conditions which must apply for the shares to qualify in such circumstances are:

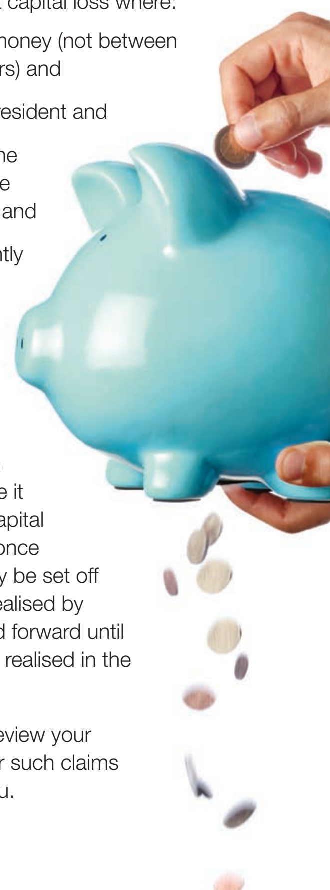
- the individual must have subscribed for the shares when issued and
- the shares must be in an unquoted qualifying trading company.

Certain trades are excluded and include leasing, legal or accountancy services, property development, farming and operating or managing hotels or nursing homes.

What about irrecoverable loans?

Provisions also apply so that an individual lender can make a claim for a capital loss where:

- an individual lends money (not between spouses/civil partners) and
- the borrower is UK resident and
- the borrower uses the monies wholly for the purposes of a trade and
- that loan subsequently becomes irrecoverable.



Similar rules apply to payments made under a guarantee.

The loss relief is not as advantageous because it can only qualify as a capital loss. This means that once established, it may only be set off against capital gains realised by the individual or carried forward until such time as gains are realised in the future.

Please contact us to review your position if you consider such claims may be available to you.

Facilitating Funding

In the Pre-Budget Report of 9 December 2009, the Chancellor announced an extension to the Enterprise Finance Guarantee scheme (EFG) which was originally due to end on 31 March 2010. The announcement stated that a further £500 million of new bank lending is to be guaranteed between 1 April 2010 and 31 March 2011.

How does it work?

The scheme aims to facilitate bank lending to viable businesses which are generally otherwise unable to secure funding, due to the lack of a track record or collateral. Guarantees are provided by the government to commercial lenders who participate in the scheme, to the extent of 75% of the loan. Loan amounts can range between £1,000 and £1 million and there are now more than 35 participating lenders.

Who is eligible?

The scheme is aimed at small businesses with the definition of small being generously defined as enterprises with up to £25 million annual turnover.

Most sectors of business are eligible although there are restrictions in certain sectors including agriculture, banking, insurance, finance and transport.

What can it cover?

The guarantee aims to cover the following types of lending:

- new term loans (with terms of between three and ten years)
- refinancing existing term loans, where the loan is at risk due to the deteriorating value of security or where for cash flow reasons, the borrower is struggling to meet existing loan repayments
- conversion of an existing overdraft into a term loan to meet working capital requirements
- guarantee on invoice finance facilities to support an agreed additional advance on a SME's debtor book. This will supplement the invoice finance facility already in place.
- guarantee on new or increased overdraft borrowing for the SMEs experiencing short term cash flow difficulties.

What does it cost?

In addition to regular capital and interest payments to your lender, and any arrangement fees which they may charge, a premium is payable to the Department for Business, Innovation and Skills.

The premium is equivalent to two per cent per annum on the outstanding balance of the loan, assessed and collected quarterly in advance throughout the life of the loan.

For further information please contact us or visit www.berr.gov.uk/whatwedo/enterprise/finance/efg/page37607.html. The site includes a list of lenders and restricted business sector areas.

Ringing the right tone

The provision of a phone for business use is an essential modern tool but it is important to avoid the tax traps...

For a number of years Mr Enterprise was employed in a management position and had always been provided with a mobile phone by his employer for personal and business use which he understood was a tax free benefit. When he set up his own company he entered into a new one year mobile phone contract early in April 2009. The contract was taken out personally but as 85% of his usage would involve business calls, he simply put the monthly bills through the company. Over the tax year 2009/10 the total payments made by the company amounted to £1,200.

Imagine his surprise to learn that there is a taxable benefit which should be included on his form P11D. As a higher rate tax payer this would result in an initial income tax charge of £480, before a claim is made to offset the business expense element. In addition both he and his company as his employer will also have to pay Class 1 National Insurance as it is the settlement of a personal bill.

What went wrong?

When directors and employees take out contracts with suppliers in their own name and then the employer settles the liabilities arising - this is treated as taxable irrespective of the nature of the expense. The taxable amount should then be recorded on form P11D. However, for NIC purposes, it is treated as cash earnings and not as a benefit. This means that Class 1 NIC is due by both the employee and employer rather than Class1A NIC by the employer only.

In the alternative situation, where the employee settles the bill initially but is then reimbursed by the employer, the payment should be included on the payroll, and will therefore be subject to PAYE and Class 1 NIC.

These rules apply in any situation where the employee/director pays personal bills and is reimbursed by the employer or where the employer settles the personal bills direct and not just in relation to mobile phones. Other examples could be home phone costs, internet or private medical cover.

Putting it right

In relation to the mobile phone provision Mr Enterprise should arrange his next contract so that it is between his company and the supplier to ensure that for 2010/11 there are no tax or NIC charges. This is because the provision of a mobile phone by an employer in this way is a tax free (and NIC free) benefit. Only one such contract is tax free for each employee.

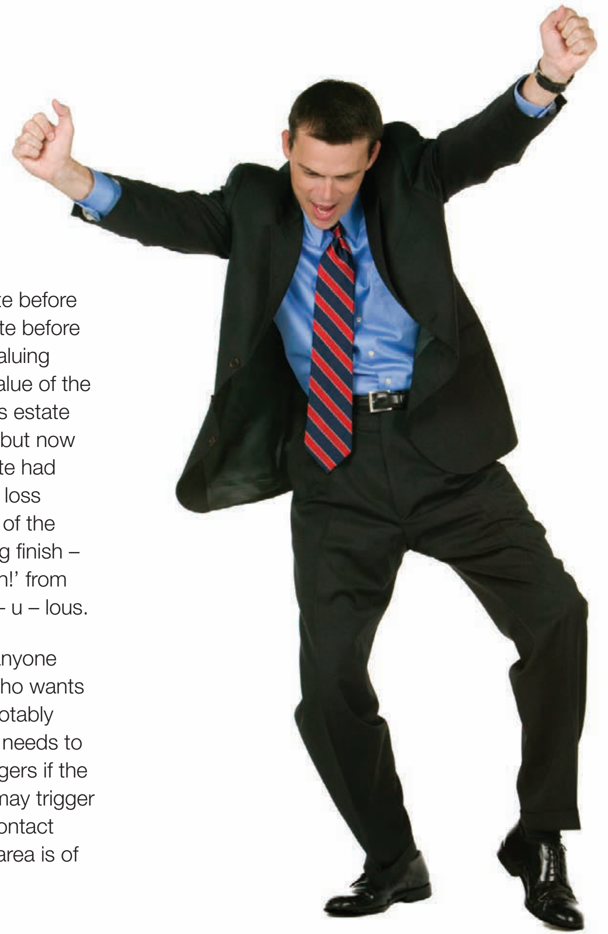
What about employer provided home phones?

Where a home phone is provided and the employer is the subscriber, the provision of any private benefit is generally taxable (unlike a mobile phone). In this case the whole cost incurred should be treated as a chargeable benefit (this includes line rental) less any costs made good by the employee. The individual can then make a tax claim for any business calls necessarily incurred to reduce the amount actually taxable.

For NIC however, unless all private costs are made good then Class 1A is due on the whole cost incurred by the employer even if the individual subsequently claims a deduction for the business element. This is clearly wasteful and should be avoided. This can easily be done by ensuring that directors and employees pay their own home phone costs and are reimbursed for business calls only. This may be achieved by posting the expense to a directors' current account where in credit.

As you can see this is an area where tax and NIC can be unintentionally incurred so please contact us to review your position on these areas.

Nifty footwork proves a winning Dance



Now that the recent series of Strictly Come Dancing has ended, memories still remain of those celebrities who managed to get all the steps wrong. Nifty footwork is the real key to success as demonstrated by an advocate in a recent case which has left HMRC in a spin.

The facts can be summarised as follows - Mr Dance owned three farms which he ran as a sole trader. He transferred one whole farm and part of another to trustees as an inheritance tax (IHT) planning exercise and claimed Business Property Relief (BPR) of 100% on the transfer. HMRC argued that the legislation states that to qualify for BPR a whole business must be transferred and not simply certain assets of the business and as Mr Dance continued to run the farm business there could be no relief.

This is where counsel for the trustees worked some show stopping magic. He reminded the court that a transfer for IHT purposes is measured by the loss to the donor's estate so it is necessary to value the whole estate before and after the transfer. Mr Dance's estate before the transfer included the farm and in valuing that, account had to be taken of the value of the farmland. Similarly after the transfer, his estate still included the value of the business but now with less land, so the value of the estate had been reduced. The only reason for the loss in value was the reduction in the value of the business and so BPR must be due. Big finish – take a bow. No Goodmanesque 'seven!' from the judge but a resounding 'ten'. Fab – u – lous.

The decision is of real significance to anyone running an unincorporated business who wants to transfer some of the assets, most notably land, to reduce their IHT burden. Care needs to be taken because there are some dangers if the donor dies within seven years as this may trigger a possible clawback of BPR. Please contact us for further advice if planning in this area is of interest to you.

As the holiday comes to an end…. What gain?

The tax treatment of Furnished Holiday Lettings (FHL) has been advantageous for many years but the rules are set to end in April 2010.

What are FHL?

The FHL rules essentially cover the commercial short term letting of residential holiday accommodation in both the UK and the European Economic Area. Until now, a FHL business has broadly qualified as a trade (providing qualifying conditions are met). This is generally more beneficial for tax purposes compared to the tax treatment of an ordinary property investment business. This will not apply from 6 April 2010 for individuals (1 April 2010 for companies).

The changes will impact in two key areas:

- the calculation of the taxable income from the continuing property letting business and
- the treatment of any capital gains arising on the disposal of the FHL business.

This article only considers the main capital gains tax aspects but please do contact us if you need further information or wish to discuss the impact on taxable income.

Capital gains tax reliefs for the individual

When an individual disposes of a qualifying FHL business, the gain may be eligible for Entrepreneurs' Relief (ER). Where the conditions for ER are met, the relief reduces gains up to £1 million, per individual, per lifetime, so that only 5/9th of the gain is chargeable to tax. This relief does not apply to disposals made by companies but may apply to shares in companies.

The FHL business will be treated as ceasing on 5 April 2010 and will be treated as a property business. This means that generally from 6 April 2010 a FHL business will no longer qualify for ER. However, the relief will still be available on the sale of any assets comprised in the business provided:

- the asset was used in a FHL business in the 12 months to 5 April 2010 and
- the disposal (for example by sale) occurs before 6 April 2013.

Example

In June 2009 Edward sold a FHL business which consisted of a Welsh holiday cottage for a gain of £72,000. He has not previously used any of his ER entitlement so the gain is reduced by 4/9th to £40,000.

If instead, the property was not sold until June 2011, but continued to be let after 5 April 2010 as furnished rental accommodation, the subsequent gain would still be eligible for ER.

What about deferring any gains?

Another CGT relief which applies to trading assets is replacement of business assets, known as rollover relief. This is available to companies and individuals. This allows a gain to be postponed, where on the disposal of a trading asset such as a property, the proceeds are reinvested in certain replacement trading assets. The relief is available whether the replacement asset is for use in the same trade or a different trade, provided the person carrying on the trade is the same. It is particularly useful for company disposals which do not qualify for ER.

When FHL cease to be a trade on 5 April 2010 (31 March 2010 for companies) then subsequent acquisitions and disposals of properties used in such businesses will no longer generally qualify for this relief. However, as the assets are trading assets until that time, any gains on disposals from the 6 April 2010 (or 1 April for companies) may be partly eligible for relief.

Example

Bounce Ltd sells a property which had always been fully used in a FHL business on 1 September 2010. It had been owned for 10 years. All the proceeds are reinvested in a property for its main catering trade. The gain is £50,000. The asset is treated as non trading for the last 6 months of the 10 year ownership which represents 5% of the gain but the remaining 95% may still be eligible for relief.

To ensure that any reliefs still available can be maximised, it will be essential to consider the timing of disposals and that all other qualifying conditions are met. Therefore please contact us to discuss how we can assist you on these business changes.

Look after the pennies…

In these austere times and with tax rises on the way, any tax or national insurance contribution (NIC) saving is a good one. One particularly useful way of mitigating tax and/or NIC is by using what is called a 'salary sacrifice' arrangement.

What is salary sacrifice?

Salary sacrifice arrangements involve a contractual right to cash pay being reduced. For that to happen two conditions have to be met:

- the potential future remuneration must be given up and
- the true construction of the revised contractual arrangements between employer and employee must be that the employee is entitled to lower cash remuneration and a benefit instead.

If that benefit happens to be tax and/or NIC efficient, then both employer and employee are happy!

When is salary sacrifice not effective?

A salary sacrifice is not effective if, in practice, the arrangement enables the employee to continue to be entitled to the higher level of cash remuneration, for example, they have merely asked the employer to apply part of that cash remuneration on their behalf.

What information does an employer need to provide to HMRC?

Whilst employers do not need to confirm anything with HMRC, some businesses might like the comfort of knowing that HMRC agree the new position. In order for HMRC to decide whether a salary sacrifice is effective or not, the employer should provide full details of the scheme and of the new contractual arrangements and satisfy HMRC that:

- the employee's entitlement to cash pay has been reduced and
- a non-cash benefit has been provided by the employer and
- the employer is not simply meeting the employee's own financial commitments.

What sorts of benefits are tax and/or NI efficient?

The list is long and varied but some more mainstream options are included below.

Qualifying beneficial loans
Certain low interest/interest free loans where all the interest is eligible for tax relief are fully exempt from any income tax charges. In addition a loan for any purpose is tax free, provided the total does not exceed £5,000 at any time during the tax year. In such qualifying situations the employer does not have to report the loans on form P11D and employees do not have to claim the corresponding tax relief.

Car parking spaces
The provision of a car parking space at or near the employee's normal place of work - this often includes 'park and ride' schemes.

Bicycles
The provision of bicycles and associated safety equipment for mainly home to work travel.

Employer pension contributions
Contributions to HMRC registered pension schemes.

Mobile phones
One private use tax free phone per employee which could be used to provide a phone to a member of the employee's family or household.

Childcare costs
Employer contracted childcare and employer provided childcare vouchers of £55 per (tax) week.

Training costs
Employer provided training costs.

What do employees need to consider?

When entering a salary sacrifice arrangement to replace part of cash pay with a benefit that is tax and/or NI free, it is essential that employees understand what the sacrifice will mean in practical terms and consider carefully the effect, or potential effect, that a reduction in their pay may have on:

- their future right to the original (higher) cash salary
- any pension scheme being contributed to
- entitlement to Working Tax Credit (WTC) or Child Tax Credit (CTC)
- entitlement to State Pension or other benefits such as Statutory Maternity Pay (SMP)
- proof of earnings for mortgage purposes.

If you have an interest in salary sacrifice, please get in touch so that we can discuss matters further.

Tips and NMW

From October 2009, using tips to make up staff pay to the National Minimum Wage (NMW) levels has been outlawed whatever method is used to pay the tips.

It all began in June 2008 when HMRC won an Employment Appeal Tribunal against the restaurant/club Annabel's and others. The case involved the calculation of NMW pay where an independent tronc scheme was in operation. Troncs are a system of pooling and distributing service charges, tips and gratuities to staff in the service industries. Under specific circumstances, payments made as tips, gratuities, service charges and cover charges may count towards NMW pay. However HMRC argued that tips, gratuities and voluntary service charges paid to workers by a troncmaster via a tronc did not count towards NMW.

In 2009 the Court of Appeal confirmed this position, meaning that employers should be paying the NMW regardless of any tips, gratuities, service charges or cover charges that are not paid by the employer through the employer's payroll.

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