money *matters*

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ACCOUNTANTS & TAXATION PRACTITIONERS

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Sowing the seeds of enterprise and other tax changes

Tax relief of up to 78% will be available for investments in new small companies under the Seed Enterprise Investment Scheme (SEIS).

This was one of several proposals in the Chancellor's Autumn Statement on 29 November aimed at stimulating growth. However, the investment risks will be high and it will not suit faint-hearted investors.

The scheme will be similar to the existing enterprise investment scheme (EIS), but it will be targeted at companies that are not more than two years old and are carrying on, or preparing to carry on, a new qualifying trade. Investors will benefit from income tax relief at 50%, regardless of the rates at which they actually pay tax on their income.

The potential for the extra 28% tax relief comes from an exemption from capital gains tax (CGT) on gains realised from disposals of any assets from 6 April 2012 to 5 April 2013, provided the gains are reinvested through the SEIS in the same period.

The company's gross assets before issue of the SEIS shares must not be more than £200,000 and the number of its full-time equivalent employees must be less than 26. The company must have a permanent establishment in the UK and not have benefited previously from EIS or venture capital trust investment. Directors, but not employees, will be able to invest in their own companies provided they own less than 30% of the company's shares.

To comply with the European Commission's state aid rules, the company must meet a 'financial health requirement' at the time the shares are issued; so a SEIS investment cannot be used to rescue a company in difficulty. A company will be able to raise up to £150,000 in total and the maximum investment for an individual will be £100,000 a year. There must be no prearranged exit for investors and the company's trade must be a genuinely new venture.

If you are attracted by the tax relief, do your research before investing. Around one in three new ventures fail in the first three years.

Other changes

The Autumn Statement confirmed that the rate of research and development (R&D) relief for small and medium enterprises will increase to 225% from its present 200%, and that companies will no longer have to spend at least £10,000 on R&D to qualify for relief. Furthermore, from April 2012, claims will no longer be limited to the amount of the company's PAYE and national insurance contributions liability.

Among other proposals are that businesses in the Humber, Black Country, Liverpool, North Eastern, Sheffield and Tees Valley enterprise zones will be able to claim 100% first-year capital allowances for plant and machinery investment for five years from April 2012. The small business rate relief holiday will be extended for six months from 1 October 2012 and businesses will be able to defer 60% of the inflation increase in their 2012/13 rates bill to be repaid equally over the following two years.

The capital gains tax annual exemption for individuals will be frozen at £10,600 for 2012/13. From 2013/14, it will normally rise in line with the consumer prices index like most other tax allowances.

The pensions revolution continues

The world of pensions continues to develop rapidly, with more changes from April and further announcements from the Government. The start of the tax year on 6 April marks several important changes to pensions.

Contracting out If you are currently contracted out of the state second pension (S2P) through a personal pension or a money purchase occupational scheme, your contracting out will end automatically on 5 April this year. The funds built up in your private pension arrangement will remain, but from 6 April you will start to accrue S2P.

National insurance contributions (NICs) NICs costs will rise from this April for employees who are contracted out through their employer's occupational scheme – increasing both employers' and employees' contributions. For final salary schemes, the contracting out NICs rebate falls from 1.6% to 1.4%. For money purchase schemes, the rebate disappears completely because contracting out will have ended. The NICs rates will not change for employees contracted out through a personal pension.

Lifetime allowance The standard lifetime allowance, which normally sets the maximum tax-efficient value of pension benefits, will fall from £1.8 million to £1.5 million. If you have existing primary or enhanced protection, the reduction will have little, if any effect. However, if you have no protection, then you may need to consider the option of claiming fixed protection, which was introduced last year.

Broadly speaking, fixed protection allows you to keep the £1.8 million lifetime allowance, but only if no further contributions are made to your money purchase pension arrangements and you don't accrue any more benefits in a defined benefit scheme that exceed set limits. You must claim fixed protection by 5 April 2012, so if this protection might be relevant to you, please contact us as soon as possible.

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Two other aspects of pensions were the subject of announcements late last year, but their impact will be longer term:

State pension age (SPA) You will only be affected by these adjustments if you were born between 6 April 1954 and 5 October 1954. The timetable for SPA increases has been changed. The move to 66 has been put back by six months, but the rise to 67 will now be introduced eight years earlier than previously planned, between April 2026 and April 2028.

Auto-enrolment The start date for auto-enrolment into pension arrangements for small employers is to be put back by 13 months, to May 2015.

For more information on the implications of these changes for you, please contact us.

Harder to escape the UK tax net

UK resident individuals have to make a distinct break with the UK if they want the tax authorities to treat them as non-UK resident, the Supreme Court has confirmed. The decision in the long-running appeal by the expatriate businessman Robert Gaines-Cooper could result in HM Revenue & Customs (HMRC) chasing thousands of British tax exiles for backdated tax.

Mr Gaines-Cooper, who spent most of his time in the Seychelles in the years concerned, argued that he was not resident in the UK because he averaged fewer than 91 days a year here – one of the tests described in HMRC's guidance booklet IR20. In 2007, the Special Commissioners (the former appeal tribunal) upheld HMRC's decision that he was UK resident. Mr Gaines-Cooper applied for judicial review, claiming that HMRC had not followed its own guidance.

Turning down his application, the Supreme Court judges held that the 90-day test applied only to taxpayers who had clearly left the UK, whereas Mr Gaines-Cooper had continued to maintain social and family ties here. They also said that HMRC had not failed to follow its guidance but that, when read as a whole, there was enough information in IR20 for 'an ordinarily sophisticated taxpayer' to conclude that a person had to leave the UK permanently or indefinitely and relinquish their usual place of residence in the UK to become non-resident. The 90-day test only applied to taxpayers who had clearly left the UK.

Helpfully, the judgment confirmed that HMRC should be bound by its guidance. Mr Gaines-Cooper lost his appeal because he did not fall within it. The IR20 booklet has now been replaced by new guidance in the form of HMRC6, which explains explicitly the need for a definite break.

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In June 2011, the Government proposed a statutory residence test to provide greater clarity, but has now postponed its introduction until April 2013. The consultation document proposed that residence status would be determined by reference to five connection factors with the UK, namely: family links; accommodation; doing substantive work in the UK; spending over 90 days here; and whether more time is spent in the UK than in another country. The present rule that a person going abroad to work full-time is non-resident from the outset would remain.

If you are planning to leave the UK, please ask us for advice about your residence status.

How employers can avoid PAYE penalties

Employers who make systematic but unidentified mistakes in their PAYE payments are likely to suffer expensive penalties under the HMRC rules that have applied in the last two tax years.

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This is because the level of penalty is based on how often they make late payments in a tax year. HMRC may send a warning letter after each late payment, but they tend to be rather vague, and they do not send out the penalty notices until the end of the tax year, because it is not possible to establish what the total penalty is until then.

However, HMRC has said that it will change this policy, but not until Real Time Information (RTI) reporting is introduced in 2013.

RTI is HMRC's great hope for modernising PAYE. With RTI, employers will send tax and national insurance information to HMRC at the time payments are made instead of waiting until after the end of the tax year. This will remove the need for an annual return, and hence the possibility of incurring late filing penalties. The starting and leaving process for employees will also be simplified.

HMRC is going to pilot RTI during 2012/13 and the new system will then be introduced from April 2013. In the interim, HMRC is recommending that employers ensure that information about each employee is accurate – name, date of birth, national insurance number, gender and address – and ideally that it has been verified from an official source.

The penalty for failing to file an end of year employer annual PAYE return on time can quickly mount up. It's calculated as £100 per 50 employees for each month or part-month late. The return should be filed by 19 May following the end of the tax year. But despite continuing criticism, HMRC does not issue the first penalty notice for a late return until 19 September – by which time the penalty will be for five months, a minimum of £500.

In two recent cases – involving Hok Ltd and HMD Response International – HMRC's approach to the issuing of penalty notices has been roundly condemned. In the case involving Hok Ltd, a company with no employees, the tribunal found that only the first £100 of the penalty was payable.

The agent acting for HMD Response International honestly and genuinely believed that filing had taken place on 16 May, and given this reasonable excuse the penalty was reduced to nil.

Please get in touch if you think you need to discuss your PAYE arrangements.

HMRC closing in on tax evaders

Wealthy people who own overseas property will face extra scrutiny from a new 200-strong team of HMRC investigators and specialists. The first to be targeted will be people with assets worth between £2.5 million and £20 million.

HMRC hopes the new Affluence Unit, which was set up in September 2011, will raise £500 million in extra tax over the next three years by using risk assessment techniques to identify people who are evading tax. After wealthy property owners, the next target will be commodity traders.

The unit has applied data mining processes to information that is publicly available in order to identify individuals who own property abroad. It then uses risk assessment tools to highlight cases where it is unclear how the person could afford to acquire the property, and then to identify those who do not seem to be declaring all their rental income and gains. People who come under enquiry should be prepared to produce documents to verify the source of the funds they used to buy the foreign home.

The unit's establishment follows the success of a similar unit set up a few years ago to deal with the tax affairs of around 5,000 'high net worth' individuals, defined as those with wealth of more than £20 million. According to HMRC, that unit collected extra tax of £85 million in 2009/10 and is on track to gain an extra £162 million for 2010/11.

HMRC is also sorting through a vast amount of information about UK residents with offshore bank accounts, most recently as a result of tax agreements with the Liechtenstein and Swiss Governments. UK taxpayers with undeclared investments in Liechtenstein are being encouraged to register under the Liechtenstein Disclosure Facility, which started in 2009 and will run until March 2015.

People who sign up and declare all their income will be subject to a 10% fixed penalty on their underpaid tax instead of the much higher penalties usually charged, or no penalty where they have made an innocent error. Liechtenstein banks will soon write to their UK customers asking them to confirm that they are fully declaring their UK tax liabilities. Those who cannot do so will have to close their accounts.

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Major changes proposed for employment law

The law could be shifting in favour of employers, especially for smaller businesses.

The Business Secretary, Vince Cable, has outlined a package of measures aimed at improving the way employers take people on, manage disputes, and dismiss employees. From 6 April 2012, the period that employees must have been with an employer before they can claim unfair dismissal is to be raised from one to two years.

One of the more radical proposals is to introduce compensated, 'no fault' dismissals for micro-firms with fewer than ten employees. An underperforming employee of such a micro-firm could be paid off with a cash settlement, with no subsequent right to claim for unfair dismissal. The Government is continuing to look at more ways to simplify the current dismissal process, including an overhaul of the employment tribunal system, which some commentators believe has become increasingly complex and inefficient. There will be a consultation on the introduction of fees for anyone wishing to take a claim to an employment tribunal.

Mr Cable also announced that the Government will consult on a proposal to allow 'protected conversations' whereby employers can discuss issues such as poor performance or retirement with employees, without any fear of the discussions subsequently being used in an employment tribunal claim. There will be a further consultation on simplifying compromise agreements, where employees waive their rights to claim against their employers in return for an agreed amount of compensation.

Employment tribunals have traditionally been unwilling to accept that the cost of providing support to a disabled employee is, alone, a legitimate reason for discrimination. However it was accepted in a recent case, *Cordell v Foreign & Commonwealth Office*, that there was no disability discrimination where the cost of making the support available was unreasonable. It should be noted that in this case the additional costs involved were considerable (around £145,000 a year) and the decision is not binding on other tribunals.

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