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Personal tax planning – Measures to consider by 5 April 2018

With only a few weeks left of the 2017/18 tax year, have you considered your overall tax position and ways to mitigate the potential tax liability?

It is important to consider if you have effectively maximised the use of your available personal allowances and tax bands. The higher rate threshold in 2017/18 is £45,000 and income exceeding £150,000 is taxed at the additional rate of 45%.

The personal savings allowance entitles basic rate savers to £1,000 of tax free savings income and £500 for higher rate tax payers however, additional rate tax payers receive no allowance. Transferring savings accounts to the lower earner could be considered, along with utilising ISA limits (2017/18 maximum allowance of £20,000). The current dividend nil rate band of £5,000 is set to reduce to £2,000 from 6 April 2018. Where owner managed businesses are concerned, the timing of dividends is important. Subject to sufficient distributable reserves, dividends maximising the dividend nil rate band could be declared for spouses or adult children. The strategic 'waiving' of a dividend can also be a useful tool in maximising the use of your available personal allowances and tax bands. However, the position can be complex in some cases, particularly where the company is a close company and so it is advisable to take advice before taking any action.

Planning should also be considered to structure your income where your taxable income is at the various 'threshold' amounts, as follows;
- over the income band £100,000 to £123,000, sees the abatement of the personal allowance and effective rate of income tax is 60%; and
- child benefit is clawed back by 1% for every £100 of income if either spouse earns over £50,000.

Preservation of child benefit and mitigation of the 60% income tax rate can take the form of personal pension contributions and gift aid contributions.

Mitigation of your annual tax liability can also take the form of certain tax efficient investments in qualifying start-up companies, providing up to 50% income tax relief. However, such investments also come with an investment risk warning.

Tax relief for finance interest for residential buy-to-let investors is gradually being restricted. By 6 April 2020 a higher or additional rate tax payer will only receive basic rate tax relief on the interest costs. In 2017/18 the amount of interest eligible for higher/additional rate relief is 75%. The result will increase income so that higher rate thresholds may be exceeded, the personal allowance may be lost or the claw back of child benefit may now apply. Advice should be sought to ensure the properties in a buy-to-let business are structured tax efficiently.

Finally, you can make capital gains of up to £11,300 free of tax in this tax year. By taking advantage of the 'spousal exemption', allowing married couples and civil partners to transfer assets between them free of tax, you could end up doubling your tax saving.

Brexit: seizing opportunities and minimising risks

It sometimes feels as though the world has been discussing Brexit constantly for the last two years and it is due to this saturation and continued uncertainty surrounding the Brexit negotiations that there appears to be a level of complacency across many local businesses.

Recent research conducted by Intertrade Ireland has shown that 91% of Northern Ireland SME businesses with cross-border sales have not yet started to plan for the nearing exit from the EU[1]. Come March 2019 there are two potential scenarios:

- no deal – time runs out and the UK leaves the EU with no agreement and trades under WTO terms; or
- a deal – the UK and EU agree on terms of withdrawal and a framework for a new relationship which may include a 'time limited' transition phase of a largely 'status-quo' trading arrangement to allow businesses to prepare for the new UK-EU relationship.

So, what steps should local businesses be taking now to prepare before it becomes too late? We advise our clients to:

- understand the potential impact,
- Brexit-proof the business; and
- capitalise on opportunities.

In seeking to measure the potential exposure, identifying key risks early allows more time to find solutions. Businesses should map out how they interact with the EU based on the worse-case scenario of 'no deal' WTO terms.

Consider the impact on trade (What are current interactions with the EU on both supply and demand basis? What tariffs may apply under WTO terms, What is your supply chain's exposure?), people and talent (conduct a residency audit to understand whether current EU workforce may be entitled to apply for 'settled status' or 'temporary status', What is the business requirement for EU workers going forward and as the battle for talent intensifies? How do you attract and retain the best domestic talent?) and Finance and Operations (consider the impact on working capital, adapt processes and systems and communicate clearly).

With preparation and seeking expert advice, businesses that have considered the impact of Brexit can then focus on specific aspects and develop a contingency plan so that they are best placed to take action whenever the final details on Brexit emerge. In relation to support available for local businesses, there are a number of programmes available to assist, such as the Intertrade Ireland 'Start to Plan' Brexit voucher which covers £2,000/€2,000 of professional advice.

VAT on cross border services

Cross border VAT issues can be complex and it is not surprising that many businesses get it wrong.

The starting point is the "general rule" for determining the place of supply and this is dictated by the business status of the customer and applies unless the services fall into any of the "exceptions".

General rule

If the customer is "in business" for VAT purposes, a Business to Business (B2B) supply occurs and the place of supply is the location of the customer. To the extent that the customer is not "in business", a Business to Consumer (B2C) supply occurs and the place of supply is the location of the supplier.

Exceptions

There are exceptions to the general rule for which the place of supply will differ. The UK VAT legislation splits these exceptions into three categories which apply:

- regardless of the customer's status ("general exceptions");
- to B2B supplies only; and
- to B2C supplies only

The general exceptions include supplies such as land-related services (subject to VAT where the land is located) passenger transport (taxed where the transport takes place) and telecommunications and broadcasting services (subject to the "use and enjoyment" provisions).

The B2B exceptions include electronically supplied services (subject to the "use and enjoyment" provisions) and admission to cultural, educational and entertainment activities (treated as made in the country in which the event takes place).

The B2C exceptions include the supply of intermediary/agent services (agent services), which are treated as made in the same country as the supply to which it relates and transport of goods (which are treated as made in the country in which the transportation takes place or if in two countries, in proportion to the distances travelled in each).

Conclusion

Every supply of services should be analysed in light of the place of supply rules to ensure that the correct VAT is accounted for by the correct entity in the correct jurisdiction.

Commercial property and non-residents

A significant change to the taxation of non-residents owning UK commercial property is to be introduced with effect from April 2019.

1 Inter Trade Ireland Quarterly Business Monitor Q3 2017

A consultation document, published on 22 November 2017, has made it clear that the UK government intends, with effect from April 2019, to apply Capital Gains Tax (CGT) to all forms of property investments by non-residents. This means that gains on commercial property will become subject to UK tax for non-resident investors.

Key points in the detail include:

- gains realised by non-UK corporate entities will be subject to corporation tax, with effect from 1 April 2019. Gains by individuals will be subject to CGT, with effect from 6 April 2019;
- both direct and indirect interests in UK property will be within the charge. This brings shares in residential property holding companies within the charge to tax in addition to direct interests in residential property;
- indirect disposals will be subject to "property richness" and "ownership" conditions that will mean CGT will only apply if the entity derives 75% or more of its value from UK property and only then to investors with holdings of 25% or more;
- rebasing will apply so that generally on a disposal non-resident individuals and trustees will be exposed on gains that have accrued from 6 April 2019, while persons within the charge to corporation tax will be exposed on gains accrued from 1 April 2019; and
- anti-forestalling rules will apply in the period up to the date the legislation has statutory effect. These will prevent some arrangements entered into on or after 22 November 2017 from applying, where the effect of those arrangements is to shelter capital gains on the disposal of an indirect interest in UK property, using the provisions of a double tax treaty.

General Data Protection Regulation and payroll

The General Data Protection Regulation (GDPR) comes into force on 25 May 2018. Much has been written and communicated on the heavy fines and penalties which come with the new legislation. The advice available to employers online and from consultancy sources is considerable. Responsible employers will already be invested in complying with GDPR's predecessor the Data Protection Act (DPA) implemented back in 1998.

Under GDPR the employer will be defined as the "data controller" with a bureau or outsourced provider being designated as data processors. The controller states why and how data is used with the processor acting on the instruction of the controller. The legal basis for the processing of data is to carry out obligations under employment and social security regulation and other statutory duties.

GDPR assigns certain rights to individual (workers) which are new and were not included in the DPA. Whilst individuals can exercise their rights and privileges, employers are going to be limited by their statutory duties to process payroll, retain information and make that information available to the authorities.

This can be seen in the right "to be forgotten" or right to erasure. This is incompatible in the context of an employer's duty to provide Her Majesty's Revenue & Customs (HMRC) PAYE and National Insurance Contributions (NIC) records, per individual, for a minimum of seven years. On a similar note, employers must retain all document used to confirm a workers' "right to work" for a minimum of two years.

Employers should consider amending or updating their use of manual payslips, which when posted are beyond your control yet contain a lot of personal information. If ePayslips are used, consider if you have received specific consent from your workers for their information to be processed in this way, and just how long will you retain the ePayslip data for someone who leaves your employment.

Some of the smaller details could easily give rise to concerns from workers around their data, which may be most readily addressed by some proactive communication ahead of May.

New rules for carried forward corporation tax losses

Reforms to the corporation tax loss relief legislation were brought in from 1 April 2017. The changes have two aims:

- to restrict the amount of loss relief available to businesses with substantial profits; and
- to allow most carried-forward losses arising from 1 April 2017 to be used more flexibly against the total taxable profits of a company and its group members.

The new rules apply as follows:

- income losses arising from 1 April 2017 can be carried forward and set against the taxable profits of different activities within a company and group relieved against the taxable profits of its group members; and
- the amount of annual profit that can be relieved by carried forward losses will be limited to 50% from 1 April 2017, subject to an allowance of £5 million per group. This includes all carried forward losses from pre 1 April 2017.

For example: If a company has £12 million of profits, it can utilise losses of £8.5 million (£5 million allowance plus 50% of the remaining £7 million profits), paying tax on £3.5 million. If a company is a part of a group, the £5million allowance is shared amongst the group.

This allowance of £5 million means that only a very small percentage of companies will be affected by the 50% restriction.

Going forward it may be important to separately record loss balances pre and post 1 April 2017, so as to determine which losses the new rules apply to.

Corporate Interest Restriction

The Corporate Interest Restriction is the UK's legislation implementing the

OECD's best-practice recommendations for limiting Base Erosion and Profit Shifting (BEPS) by means of excessive tax deductions for financing costs. Under these new rules, from the 1 April 2017, net interest and similar financing costs within a group will be restricted using complex calculations. These rules will only apply to international groups and is subject to a £2 million per annum net interest expense de-minimis limit, below which there is no reporting requirement or restriction.

Patent Box

Patents can be an invaluable asset to businesses who want to protect their inventions. Patents can be applied for when an invention is new, involves an inventive step and is capable of being made or used. While the patent application process can be long, if it is successful it can give significant protection that can deter competitors and boost market share.

In addition to the obvious commercial benefits, there are generous tax reliefs in place for income from patented technologies in the form of the Patent Box regime. The Patent Box enables profits which are earned from Intellectual Property (IP), including patented inventions, to be taxed at a lower rate of 10%. Companies can potentially benefit from it if they hold patents or licence patented technology from others exclusively. Significant contributions have to be made to the development of the patented invention in order for the relief to apply.

The relief has the potential to significantly benefit a number of companies but HMRC statistics show that there has not been a substantial election into the scheme across the UK and Northern Ireland is the lowest claiming region.

Companies are missing out on vital tax reliefs and should consider whether there is potential to elect into this regime. Firstly, consider whether a patent is in place or if it would be of commercial benefit to apply for one.

It is important to note that profits from products containing a patented component can utilise the Patent Box, it is not necessary for the whole product to be patented. It only takes one integral patented component for the profits from the product or process to be included in the Patent Box.

The Patent Box complements Research and Development (R&D) relief so that companies can take maximum advantage of combining these innovation tax reliefs on offer.

Cryptocurrency

Cryptocurrency is a virtual currency that is created by encryption technology and is independent of any central bank. Cryptocurrency is not a new technology, it has been around for over ten years, but only recently gained large amounts of media attention. The recent surge in popularity of the currency has caused a large increase in its value leading to potential taxable gains for its holders.

HMRC released guidelines back in 2014 but as of yet there has been no case law to help define its treatment.

If a business uses cryptocurrency for carrying out transactions, the normal foreign exchange rules apply for reporting business transactions, with any foreign exchange movement between currencies being taxable.

If gains and losses are incurred on disposals of cryptocurrencies held as an investment, they will be chargeable or allowable under CGT rules. Foreign currency bank accounts are exempt from CGT and there is an argument that digital 'web wallets' (where these currencies can be stored) are in essence a foreign bank and therefore the disposals may be considered exempt. However, HMRC are likely to strongly challenge this view.

Individuals will not need to pay CGT if their total annual chargeable profits are within the annual tax free capital gains allowance of £11,300. You still need to report gains in your tax return if the total proceeds received are more than four times the allowance, if you are already registered for self assessment.

If a person is regularly buying and selling cryptocurrency, they may be considered as carrying on a trade and taxed under income tax rules and subject to class 2 and 4 national insurance.

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