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Tax newsletter

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The UK government withdrawal of Finance Bill 2017 clauses

In order to ensure the Finance Bill 2017 was passed before parliament on 3 May, the UK government and opposition agreed to withdraw most of the more complex and controversial measures reducing it to its core elements. This decision was a practical one. As originally drafted, the Finance Bill 2017 was the longest on record. Therefore, rather than hastily pushing through particular provisions without detailed review and opportunity to make amendments, they will be debated in detail, following on from the general election.

It is unclear whether the new UK government will enact the provisions with retrospective effect to 6 April 2017. Withdrawn provisions include those relating to:

- corporate interest deductibility;
- corporate loss relief;
- targeting anti-avoidance;
- ending the permanency of non-domiciles (rules that allow foreign residents to keep their foreign income outside the scope of UK tax); and
- deferring tax digitalisation for smaller businesses to April 2019.

Corporate interest deductibility

The provision to align UK tax law to the recommendations of OECD Base Erosion and Profit Shifting (BEPS) Action 4 was removed. The effect of this measure on corporates was to restrict UK net interest to 30% of net taxable profits.

Corporate loss relief

Proposed changes to restrict the offset of brought forward losses to 50% on profits arising on or after 1 April 2017 and enable the carried forward losses arising on or after 1 April 2017 to be offset against corporate profits of any description or group relieved, have been withdrawn. Current loss carried forward rules currently remain.

Anti-avoidance

Anti-avoidance provisions, such as penalising enablers of anti-avoidance schemes (which are later defeated by HMRC), have been withdrawn. However, anti-avoidance is a key focus and as the new measures were to generate additional revenue of £1 billion by 2021/22 it is anticipated that the new government will enact them in legislation.

Non-domiciles

Fundamental changes to the tax regime for non-domiciles were announced in the Finance Bill 2017 to include new 'deemed domicile' rules for income tax, capital gains tax and inheritance tax. The provisions are extremely complex therefore it is possible some draft legislation may be amended. One contentious area which will be debated is around the complex mixed funds rules. With this in mind advice to affected non-domiciles would be to hold tight and defer planning until the position has become clear.

Making tax digital

The government reforms on 'making tax digital' require businesses, including small businesses and landlords, to maintain digital records and submit quarterly records to HMRC. Over 3.1 million businesses with turnover below the VAT threshold were to have an extra year to prepare for the mandatory digital regime commencing on 6 April 2019. This provision has been removed and it is unclear if this is a temporary deferral pending a second finance bill after the election or whether it will be more permanent.

2016/17 expense and benefit reporting

In addition to paying employees their salary, it is common for employers to provide employees with benefits or to reimburse expenses incurred in the performance of employment duties.

P11D reporting

Where an employer provides its employees with taxable benefits and they are not taxed via payroll, these benefits need to be reported on the employee's annual form P11D.

Common benefits included on forms P11D include the following:

- company car and/or private fuel;
- loans with no interest, or low interest (except for loans up to £10,000 which can be provided to employees and directors tax free); and
- private medical insurance.

The employer must pay Class 1A NIC on the total value of the benefits provided to the employees and this amount is reported on a Form P11D(b).

Both Forms P11D and P11D(b) must be **submitted to HMRC by 6 July** following the end of the tax year. Where the forms are submitted after this date, late filing penalties may be imposed (up to 100% of the potentially lost revenue).

The **payment** of Class 1A National Insurance Contributions (NIC) must be made **by 19 July or 22 July** if paid electronically.

PAYE Settlement Agreement (PSA)

A PSA is an optional arrangement between an employer and HMRC. PSAs can cover trivial, small and irregular benefits provided to employees where a company agrees to settle any PAYE tax and NIC due to HMRC on these expenses in one annual payment. It also removes the administrative burden of reporting expenses on P11D forms.

Typically PSAs will cover staff entertaining expenses, staff prizes and recognition awards (non-cash) and non-cash vouchers.

A formal written agreement must be entered into with HMRC by 6 July following the end of the tax year, identifying the items to be included in PSA (ie by 6 July 2017 for the 2016/17 tax year).

Where a PSA is in place, the employer is liable to Class 1A NIC in addition to the income tax liability arising on the benefits provided to employees (which are calculated on a grossed-up basis).

The PSA income tax and NIC calculation must be **prepared and submitted to HMRC by 30 July** following the end of the tax year. Once HMRC agree the calculation, the **tax must be paid by 19 October or 22 October** if paid electronically.

If income tax and Class 1A NIC is paid late, interest will be charged on amount outstanding. If the payment is made after 31 October, this may result in the PSA being withdrawn.

Mind the pay gap

Equality Act 2010 (Gender pay gap information) regulations

From April 2017 regulations for reporting the gender pay gap have impacted employers in Great Britain with more than 250 employees. Northern Ireland based employers may have some breathing room as employment law is a devolved function and local legislation has still to be enacted but we will have to comply, sooner or later.

Based on the legislation as it applies to employers in Great Britain, if you have more than 250 employees/workers you will be required to identify and report your gender pay gap. The deadline for the publishing the results of the gender gap analysis is 5 April 2018 for the private sector and 30 March 2018 for the public sector.

You must report on three areas and make the information public on your website:

- annual snapshot of gender pay differential, mean and median values;
- twelve months look-back at bonus and long term incentive plan schemes, mean and median values; and
- quartile figures of employee gender and pay differentials.

While the reporting will present a number of challenges for businesses from collecting the right data to preparing the calculations, the real challenge lies in presenting the information with meaningful insight and communicating an effective long term strategy for addressing diversity issues.

Grant Thornton's recommended approach to gender pay gap reporting involves three phases:

- phase one - data collection;
- phase two - analysis and insight; and
- phase three - strategy and communication.

Apprenticeships levy

The apprenticeship levy introduced in Finance Act 2016 applies from 6 April 2017. Apprenticeships are a devolved policy therefore, the Northern Ireland Executive will manage local apprenticeship programmes and have flexibility over how Westminster funding is spent on training.

Employers, companies, groups of companies, charities and not for profit organisations with a total annual pay bill in excess of £3 million will have a levy of 0.5% applied to their staff pay bill, collected via PAYE alongside income tax and national insurance. Relief for the levy will be available when calculating the employers' profits for tax purposes.

Each employer will receive an allowance of £15,000 to offset against their levy payment. For groups of connected companies and entities, the allowance is apportioned across the group.

Failures or inaccuracies in apprenticeship levy returns or payments are subject to the same penalty regime as PAYE returns and payments.

Most payroll software providers should be equipped to deal with the levy however, employers should get to grips fast to understand these new employer compliance obligations and whether they apply to them. For those caught paying the levy, though it is an additional cost, the aim of the levy is to promote productivity and growth in business.

Salary sacrifice

From 6 April 2017 the income tax and employer NIC advantages of many salary sacrifice schemes have been removed. The new rules refer to Optional Remuneration Arrangements (OpRA) which covers two circumstances where the employee:

- gives up a present or future right to receive earnings in order to receive a benefit; or
- is given the option of receiving a benefit or a cash alternative.

The taxable value of benefits in kind provided where earnings are foregone in exchange for the benefit will be the higher of the:

- earnings foregone; and
- taxable value determined under the benefits code.

The employer will have to deduct income tax and pay employer's Class 1A NIC on the value of the optional remuneration. There is no change to arrangements for employees sacrificing salary for:

- pension contributions or advice;
- cycle to work schemes;
- ultra-low emission vehicles (currently CO_2 <75g/km);
- certain employer supported childcare; and
- intangible benefits such as annual leave and flexible working.

There are also transitional rules which mean salary sacrifice contracts entered into before 6 April 2017 will be protected until the earliest of:

- the date on which the salary sacrifice contract ends or is changed, modified, varied or renewed; and
- 6 April 2018 except where the benefit provided is a car with CO_2 emissions exceeding 75g/km, living accommodation or school fees, in which case the date is 6 April 2021.

However, if an employee starts a contract on or after 6 April 2017, the new rules will apply immediately.

Childcare – new scheme, new rules and what do we do?

As awareness about the new scheme increases, employees will, to some degree, look to their employer for advice.

Employer supported Childcare Vouchers (CCV)

Employers and employees will be familiar with the existing CCV scheme and the annual savings of £933. This scheme closes to new members from April 2018. There is an opportunity for employers to promote membership before April 2018, to maximise employer NIC saving.

Tax Free Childcare (TFC)

From April 2017 the new scheme provides up to £2,000 funding per child and will be gradually rolled out. The initial phase is open now to children who will be under four on 31 August 2017 (under 17 with a disability). It applies to self-employed parent(s) as well as employed.

The application and administration is managed by the parent(s) on-line, no input is required from the employer. Eligibility criteria applies, with a three monthly process of on-line certification.

Will I be better off?

This is the critical assessment for parents, who once they opt for TFC cannot reverse the process, even if you are worse off. Employers may want to avoid this question altogether as variations will be as unique as the families concerned.

VAT update – quarterly round

Bad debt relief – HMRC invites claims

HMRC has issued Revenue and Customs Brief 01/2017. The Brief acknowledges that businesses that suffered bad debts between 1 April 1989 and 19 March 1997 may be entitled to make a claim for a refund.

Following the Court of Appeal's judgments in the cases involving British Telecom and GMAC UK. The Court found that the previous conditions imposed by UK VAT law were disproportionate but that claims prior to 1 April 1989 were 'out-of-time'.

If businesses can satisfy evidential conditions, claims for bad debt relief will be repaid.

Brockenhurst College – Court of Justice of the European Union (CJEU)

The CJEU has overturned the advocate general's opinion in a case concerning whether supplies of catering and entertainment services made to third party customers in return for a fee were closely related to the supply of education made by the Further Education College to its students.

In order to give its catering, hospitality and performing arts students practical hands on experience the college operates a training restaurant and puts on concerts which members of the public pay for.

The CJEU found these services were closely related and should be exempt from VAT and therefore, were not subject to VAT.

Any college that has yet to submit a claim should now do so.

MVM - CJEU

The issue in this case was whether VAT input tax incurred by a holding company could be reclaimed.

Under the EU VAT regime, recoverability of input VAT is dependent on the claimant being involved in the making of taxable supplies (ie being a taxable person).

Here, there were no charges made to the subsidiaries to recoup costs. As such, there were no supplies made for consideration, ie there was no economic activity against which the input tax could be claimed.

UK Supreme Court to refer Volkswagen Financial Services (VWFS) to CJEU

This is a long-running VAT case. VWFS supplies cars and Hire Purchase (HP) to Volkswagen customers. It argues that VAT incurred on overheads in its retail sector should be apportioned between its taxable supplies (the sale of the vehicle) and its exempt supplies (the supply of finance).

HMRC considers that, as the vehicles are bought and sold for the same price (ie there is no mark-up), the overheads must be attributable solely to the supply of finance.

The first-tier agreed with VWFS but this was overturned by the upper tribunal.

The Court of Appeal then found for VWFS and HMRC appealed to the Supreme Court, which has decided to refer the matter to the CJEU.

Furnished Holiday Let (FHL)

With the summer holidays imminent and individuals preparing to jet off to their holiday home they should consider if they are maximising tax reliefs on their property.

If the property is used by such individuals a few times during the year for their own personal use and let at all other times or available for letting it may qualify as a FHL.

Properties qualifying as FHL benefit from tax reliefs that are normally associated with trading properties and differs to other residential property. For example, profits from the FHL business are classed as relevant earnings for pension contributions, capital allowances can be claimed on expenditure incurred in the business including integral features, capital gains entrepreneurs relief apply therefore if the property is sold the gain is taxed at 10% rather than the top rate of 28% for residential properties.

The FHL business may qualify for IHT relief if the owner can demonstrate the provision of services significantly exceed what is usually expected from running this type of business.

Certain conditions must be satisfied for the property to qualify as FHL. The three basic requirements are:

- the property must be available for letting to the public for at least 210 days in a 12 month period;
- be actually let as holiday accommodation to the public for at least 105 days in the 12 months; and
- the property is not occupied by holiday maker for more than 31 days unless due to exceptional circumstances.

If the letting conditions above are not met in a tax year the property may still qualify by making a period of grace election, therefore preserving the tax benefits applicable to FHL. To qualify the property must be in the UK or EEA.

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