Grant Thornton
An instinct for growth™

Tax newsletter

Issue 8 · December 2018

This issue:

- understanding the Brexit backstop;
- pensions auto enrolment, again!;
- Autumn Budget 2018;
- deductions allowance;
- tax on trivial benefits;
- dynamic PAYE coding;
- cross border workers;
- off-payroll working in the private sector; and
- inheritance tax review.

Peter Legge
Partner, Tax
T +44 (0)28 9587 1081
E peter.legge@ie.gt.com

Understanding the Brexit backstop

Within the Withdrawal Agreement is a protocol on Ireland/Northern Ireland designed to ensure that no hard border exists between the two – these provisions are known as the 'backstop'.

The backstop would create a special status for Northern Ireland. This could make Northern Ireland a favourable location for manufacturing and would create some changes for all UK businesses importing or exporting goods from/to the EU.

These provisions would come into force at the end of the proposed transition period (31 December 2020 - unless extended) if no new agreement is made and would last until they were superseded by a new trade deal. The UK has no unilateral right to exit the backstop.

How does it work?

The backstop is focused on trade in goods rather than services. It creates some implications for the whole of the UK:

- there will be a single EU-UK customs territory - avoiding the need for tariffs, quotas or checks on rules of origin between the EU and the UK. However, this will not prohibit all customs formalities on movements of goods between the UK and the EU; and
- the UK will commit to observe a range of regulatory obligations including environmental standards, workers' rights, competition and state aid to ensure there is a level playing field between the EU and the UK.

In Northern Ireland:

- the province will remain aligned to a significant number of the EU's Single Market rules including on goods and product standards, agricultural production/marketing, sanitary and veterinary controls, and VAT and excise; and
- the Union's Customs Code (UCC), which sets out the EU's customs rules and the provisions for releasing products into free circulation within the EU, will continue to apply.

Together, these should ensure that Northern Irish businesses will not face restrictions when placing products on the EU's Single Market.

However, there will be some regulatory compliance checks on the movement of goods between Northern Ireland and Great Britain. There could also be some VAT consequences and customs formalities needed for such movements.

What does it mean for Northern Ireland businesses?

Under the backstop, businesses in Northern Ireland that manufacture goods complying with the EU standards applicable in Northern Ireland will be able to sell these products in both the EU and UK.

Where certification and product approval are required, businesses in Northern Ireland may require authorisation from a EU27 member state authority or body. This authorisation will also be recognised in the UK market, meaning that only one approval or certification will be required to sell goods both in the EU and the rest of the UK.

Planning ahead

If the Withdrawal Agreement is passed, the backstop would become the new "worst-case scenario" for EU-UK trade arrangements. It sets the minimum barriers to trade which any future relationship would either adopt or improve upon.

The special status for Northern Ireland, and its continued access to the EU Single Market, could create opportunities for Northern Ireland businesses compared to their Great Britain counterparts.

We recommend that all businesses make contingency plans for Brexit.

Pensions auto enrolment, again!

For employers, pensions auto enrolment should sit easily within the "compliance basket". The basket will include other topics such as PAYE, the National Minimum Wage, the Living Wage, employment status, P11D's etc. Despite being relatively new, pensions auto enrolment has become firmly entrenched within employer operations, which is exactly what the Government intended. Whilst there are still those who will flout rules and responsibilities, the Pensions Regulator has enough teeth to bare or indeed bite, in order to drive compliance.

Since the scheme's inception in 2012 the contribution rates have been kept low. This has encouraged staff to stay-in. April 2018 was the first uplift, from 1% to 3% with some in the industry predicting significant opt-out volumes as staff struggled with increasing contributions. April 2019 will see a further increase in the mandatory rate to 5% for employees and 3% for employers. The question is: can employers do more to encourage staff to stay in with matched contributions or are other options such as capping the amount of contributions possible?

With other changes in the Budget impacting payroll in April, don't lose sight of the new rates for the National Minimum Wage and Living Wage. Periodic reviews are essential to monitor your compliance and ensure recording of working time is maintained. HMRC activity in this area is increasing and HMRC's policy of "naming and shaming" those whose compliance falls short is unwelcome attention for any business or employer.

Autumn Budget 2018

On 29 October 2018 and quite a bit earlier than usual, the Chancellor 'Fiscal Phil' Hammond announced the final Budget before the next big 'B' day, Brexit, on the 29 March 2019.

Worryingly, the Office for Budget Responsibility (OBR) issued a strong statement that 'there remains no meaningful basis on which to predict the outcome of current negotiations over the relationship between the UK and EU after Brexit'. As a result, the Chancellor introduced a series of short term spending measures for the NHS and education including £300 million for shared education for Northern Ireland.

There were some early bonuses, as the Chancellor is increasing the personal allowance to £12,500 and the higher rate tax threshold to £50,000 a year early than previously announced, from next April. He also provided some good news for Northern Ireland, with his approval of the £350 million funding for the Belfast Region City Deal and an additional £2 million for city centre businesses to assist with the aftermath of the Bank Buildings fire. This is welcome, particularly in light of the 'exclusion zone' and Danske Bank's recent Consumer Index showing that consumers here have been at their lowest ebb this year as pressures of Brexit uncertainty and rising prices take their toll.

We are currently working closely with a wide range of clients to prepare and implement 'no deal' contingency plans and have found many are postponing expansion plans; therefore, we welcome the increased capital investment reliefs introduced. The annual investment allowance, which provides for 100% tax relief on qualifying plant and machinery, has been increased from £200,000 to £1 million for the next two years and a new 'Structures and Buildings Allowance' has been introduced, both of which are aimed at boosting capital expenditure by local companies.

The range of increased tax reliefs and generous spending measures announced in this Budget were intended to mark 'austerity coming to an end' in light of significantly improved public finance figures from the OBR. Unsurprisingly, however, there were no long-term plans and many view this Budget as a sticking plaster to get the UK through the Brexit negotiations. While there remains much uncertainty over the next few months, this Budget gives reassurance to those businesses already planning for a 'no deal' scenario that the government is doing the same! Their plans include an additional £0.5 billion (to the existing £3.7 billion) allocated to government departments to prepare for Brexit and confirmation that an 'emergency budget' may be required in the Spring in the event of a 'no deal' Brexit.

Deductions allowance

The corporation tax loss relief reforms introduced in the second 2017 Finance Act enabled trading losses to be carried forward and set off against total profits when previously they could only be carried forward against trading profits. This offset of losses brought forward against total profits also extends to include other companies in the group. The catch is that losses can only be offset against up to 50% of profits. This restriction, however, only applies to the extent profits exceed £5m.

So far so good, it seemed. As 99% of companies should not have this level of profits, there should be no restriction in the majority of cases. Unfortunately, however even if the restriction does not apply because profits are below £5m there is still an administrative requirement in all cases where losses are being utilised to state in the computation the amount of the £5m allowance that is being claimed. This requires an extra disclosure in the corporation tax computation. Failure to comply may mean that the set off of losses carried forward will not be allowed.

Furthermore, where losses carried forward are relieved against the profits of other group members, the £5m allowance applies to the whole group. Therefore, there is a further requirement for one of the companies within the group to be nominated to provide a 'group allowance allocation statement' to HMRC. This statement should set out details of how the £5m allowance has been utilised. This seemingly applies even if no offset is being claimed. The statement will form an extra attachment to be included along with the tax return and computation.

Tax on trivial benefits

It is the season to be jolly and recent changes in the tax rules give employers the green light to spread some Christmas cheer by providing their employees with some tax free gifts.

Prior to April 2016 any employer wishing to provide a small benefit to an employee could apply to HMRC to exempt the benefit from tax. There was no statutory limit; however, where it could be shown that the benefit taxable on the employees was so trivial that it was not worth pursuing, HMRC could permit the employer to exclude it from normal P11D's and PAYE settlement agreements. However, there is now a statutory exemption for trivial benefits where certain conditions are satisfied.

The cost of providing the benefit cannot exceed £50 and cannot be in the form of cash or a cash voucher. There should be no contractual entitlement to the benefit and it cannot be in recognition or reward for services.

Where the employer is a close company and the individual is an officer of that company then the exemption is capped at a total cost of £300 in the tax year.

Where the conditions are not met then the cost of providing the benefit must be disclosed on form P11D with the employee meeting the income tax arising on the benefit or in a PAYE settlement agreement where the tax on the benefit is grossed up and met by the employer. Previously, HMRC had to grant agreement for a PAYE settlement agreement to be operated but this is no longer the case and employers can account for employees' tax in this way as long as the calculation for the agreement is submitted by the deadline of 6 July following the tax year end.

Dynamic PAYE coding

HMRC have changed how they collect tax underpaid through adjustments in an employee's PAYE code. Previously an event that triggered an update to a PAYE code, such as the provision of a new company car or Benefit In Kind (BIK), would generate an amendment to the PAYE code to account for the income tax due on that benefit for the remainder of the tax year. The tax due on the benefit before the PAYE code was adjusted was generally carried forward to be collected in a later tax year requiring HMRC to reconcile the taxpayer's position and issue a P800 notification.

However, HMRC are starting to use Real Time Information (RTI) data to generate an "in-year restriction" which aims to calculate and collect the estimated underpayment in the current year. The main objective for HMRC is to reduce the number of annual P800 notifications (currently 8 million reconciliations are required each year) and collect the correct amount of tax for a tax year during that tax year.

Using RTI has limitations as it assumes pay accrues evenly over the course of the tax year. Therefore, bonuses paid early in the tax year may impact the calculation of the tax underpaid. Naturally there have been teething problems with payroll bureaus citing PAYE coding overload with additional codes now having to be checked each year. Changes to a code should be reported as soon as possible and employees should remember to check their codes regularly; HMRC can amend them if there is likely to be a significant error in the tax being collected.

Cross border workers

Employers sending their employees to work outside their normal country of work and residence have several tax issues to consider. Foreign payroll obligations may arise and different jurisdictions will have different rules and conditions. If tax is being paid through a foreign payroll then the employer will have to consider how it may obtain a foreign tax credit, if the same income is being taxed in the normal country of work.

The rules on tax residence should also be considered, as a change in the employee's residence could change the shape of the payroll and ultimately the employer's responsibilities.

Applications can be made, where countries have an appropriate agreement between each other, for the employee to be exempt from social security in an offshore workplace and certificates can be obtained from the home country's tax authority.

The employer should also consider whether the duties being performed by the employee create a permanent establishment in the foreign country, as this could result in a tax presence with the employing entity having to register for corporate tax and potentially pay tax on revenues generated there.

Off-payroll working in the private sector

In the Autumn Budget 2018 Philip Hammond announced that large and medium sized private sector bodies will have the same responsibility as public sector bodies when engaging with contractors, freelancers or consultants through a Personal Service Company ('PSC') or agency arrangement.

From April 2017, HMRC transferred the responsibility for deciding whether IR35 rules applied from the contractor to the engaging public sector body. IR35 rules broadly require the PSC to operate PAYE and NIC on payments received from an engaging body. However, under the current rules if the public sector body decides the IR35 rules apply, then any payments made to the PSC are processed through the public sector body's payroll, treating the contractor as if they were an employee for PAYE and NIC purposes.

From April 2020 these rules will also apply to some private sector bodies. Although the long lead-in time does give businesses plenty of time to consult with HMRC and prepare, these changes will add another layer of burden and paperwork on affected businesses. Getting it right will not always be straightforward. HMRC's Check Employment Status Test and traditional self-employment indicators can help (but not always) clarify the status of the worker. Financial risk, control over how and when the work is done and the substitutability of the contractor are often key drivers and each should be considered in turn with outcomes documented, filed and revisited regularly.

Get it wrong and the PAYE/NIC at stake will be due to be paid by the business rather than the contractor.

Now is the time to identify your off-payroll workers and consider the contractual and factual terms of the engagement.

Inheritance Tax (IHT) review

The Office of Tax Simplification (OTS) is undertaking a two-part review of Inheritance Tax (IHT) in response to the request from the Chancellor of the Exchequer in January 2018. The overall aim of the review is to identify opportunities and develop recommendations for simplifying IHT from both a tax technical and an administrative standpoint.

The OTS published their first report on 23 November 2018 which examined the administrative issues. The second report will follow in Spring 2019 and will cover wider areas of concern for people including some of the areas of complexity and technical aspects of the IHT rules. The OTS will consider what, if anything, can be done to simplify the rules. It will then be a matter for government to consider whether or not to make changes based on the recommendations outlined in the two reports.

Some of the key recommendations from the November report include:

- implementing a fully integrated digital system for IHT, ideally including the ability to complete and submit a probate application;
- pending the implementation of a digital system, making changes to the current forms to reduce and simplify the administration of estates, including introducing a very short form for the simplest estates and updating the conditions to be able to complete a short IHT form;
- review the requirement for trustees to submit forms when no IHT is due and no reliefs or exemptions are claimed; and
- make changes to simplify the existing forms for IHT lifetime charges and trusts.

www.grantthorntonni.com

@GrantThorntonNI

Grant Thornton (NI) LLP

Offices in Belfast, Dublin, Cork, Galway, Kildare, Limerick and Longford.

Grant Thornton

An instinct for growth™

grantthorntonni.com