UHY Hacker Young
Chartered Accountants

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Tax Update

Our summary of the latest tax issues

> Getting more people into work not only saves on welfare, but can also generate more revenue.

Changing times

Unusually, we are writing this Tax Update in the aftermath of a General Election when typically change would seem even more inevitable. Although we did not see a change in the major governing party we did move from a coalition to a majority government and consequently a lower risk of major change in policy.

If the Conservative government are to reduce the deficit, as announced, whilst freezing income tax, national insurance and VAT rates and increasing the personal tax-free allowance, they will not only have to make several cuts but also need to stimulate business further. Encouraging more people into work not only saves on welfare, but can also generate more revenue so extending the apprentices and young person's reliefs for national insurance could achieve both aims in one hit.

Some felt an additional Budget in these circumstances was unlikely, however, George Osborne did not take long to announce he will be making a further speech on 8 July. Perhaps he wants to take advantage of the turmoil caused to both the Labour party and Liberal democrats whilst they appoint new leaders.

As with the last announcement, our specialist tax partners from around the UK will be watching the announcement and will be providing live commentary through our social media platforms; **Twitter** and **LinkedIn**. Look out for further communications from us on this closer to the time.

Whilst one should expect the measures announced in March which did not make the Finance Act 2015 to be re-instated, no doubt some of the other items included in their manifesto could come into place.

Unfortunately, tax avoidance, although legal, still seems high on the public hate list and thus further regulation is inevitable.

Roy Maugham, London

Non-UK resident owners of UK residential property

A new Capital Gains Tax (CGT) charge has been introduced which will affect any gains made by non-UK residents disposing of UK residential property.

The charge was introduced to tackle a perceived unfairness in the tax system by addressing the imbalance between the treatment of UK residents and non-UK residents disposing of UK residential property. This charge came into effect on 6 April 2015 and becomes applicable on any gains arising after that date from the disposal of a qualifying property, meaning it would be advisable to record the condition of any relevant property and unusual features now to assist with any valuation later on.

Who is affected?

The new charge applies to non-UK resident individuals, partners, trustees, personal representatives and foundations. The charge will also apply to certain non-UK resident companies if they are 'closely-held' (broadly, one which is under the control of five or fewer shareholders or participators).

Parties who fall outside the rules include pension funds, shareholders of property-owning companies and Real Estate Investment Trusts (REITs).

What properties does the charge apply to?

The tax charge applies to the disposal of a 'UK residential property interest' either used, or suitable for use, as a dwelling. The legislation defines what counts as a UK residential property interest.

There is no 'de minimis' threshold, meaning qualifying properties of any value can potentially be affected. This includes property(ies) being built or converted for residential use, although building land is outside the scope of the charge until actual construction commences.

Certain forms of communal residential property fall outside the scope of the charge; the main exceptions being hotels, care homes, nursing homes, hospices, boarding schools, army barracks and purpose-built student accommodation.

How is the charge calculated?

The new charge only taxes gains arising on or after 6 April 2015.

There are three ways of calculating the gain. As a property owner, we can help you decide which of the following methods to use:

1. The default position is that the non-UK resident taxpayer is treated as having rebased the cost of the property to its market value as at 5 April 2015. The increase in value from that date produces the taxable gain.
2. The taxpayer may make an election for the chargeable gain to be calculated on a time-apportionment basis, taking into account the whole period of ownership.
3. Alternatively, the taxpayer can elect to compute their gain over the whole period of ownership (ie. including the period before 6 April 2015), if that would be preferable. This option is only likely to be relevant when there is a loss at the point of rebasing.

Non-UK resident individuals are entitled to deduct the CGT annual exempt amount in arriving at their gains. Non-UK resident companies are eligible for indexation relief.

If you have lived overseas but move to the UK before your property is sold, no rebasing can be made and it will be subject to CGT in the normal way, ie. UK residents are unaffected by the changes.

If your property has been used as a dwelling and for other purposes (ie. 'mixed use'), appropriate apportionment provisions apply.

Rates of CGT

The new charge utilises existing CGT rates, which currently stand at 18% and 28% for individuals and 20% for companies respectively. However, if the property is subject to the Annual Tax on Enveloped Dwellings (ATED) regime, the company rate will be 28%.

Losses

There are special rules for losses which arise on the disposal of residential property. Losses will generally be ring-fenced and can only be used to offset gains on other UK residential properties arising in the same or future tax years.

Notifying HMRC and paying the tax

If you are a non-UK resident vendor you must submit a Non-Resident Capital Gains Tax (NRCGT) return to HMRC, within 30 days of the property transaction being completed. You will usually have to report the gain AND pay the tax charge at the same time. Any amendments to the return are allowed within 12 months of the filing date.

All disposals must be reported to HMRC irrespective of whether there is a tax liability. Your return must include an 'advance self-assessment' of the amount liable for the tax year in question.

If you are a non-UK resident already within the self-assessment system, you will have to report the disposal both on the NRCGT return and again on the self-assessment tax return, but payment of the tax can be postponed until the normal self-assessment payment date.

Principal Private Residence Relief

The UK Government was concerned that a non-UK resident could make an election for their UK property to be their main residence and thereby avoid a CGT charge by virtue of Principal Private Residence (PPR) relief. Therefore, the Government introduced new legislation to ensure that a residence will only be eligible for PPR relief for a tax year if the person making the disposal is either tax resident in the UK or has spent at least 90 days in that property in the tax year. Previous periods of occupation as an elected or actual main residence before April 2015 can be taken into account on a future disposal by a non-UK resident.

As a non-UK resident, what do I need to do?

There is no requirement for a 6 April 2015 valuation until the property disposal takes place. This can be carried out by a valuer when the property is sold, even if that is some years after April 2015.

By way of general advice, it would seem sensible to record, as at 6 April 2015, what condition the property is in and any unusual features, as this will assist with any valuation later on.

Affected non-UK residents are advised to arrange a '6 April 2015 valuation' in any event, while the evidence is readily available. Dated photographs would assist in this process.

Whether you are a UK or non-UK resident we can address any concerns you may have regarding the new CGT charge. Please contact your usual UHY adviser for further advice.

Craig Walker, York

Losses carried forward

Gone are the times one had a reasonable expectation that a struggling business would be nurtured back to life with the benefit of new profits generated being relieved for tax purposes by former losses as a matter of course. Whilst we have always had a rule that the profits needed to be generated from the same trade we had not, until recently, had a time cap on the use of such losses, unlike many other countries.

George Osborne's 2015 Budget followed a court case (Leekes Ltd v Revenue & Customs) in which the Revenue lost. Here, a company ran out of town department stores and acquired another company running furniture stores and warehousing facilities, which had accumulated significant trading losses. Following the acquisition, the trade was transferred and the Leekes branding was adopted although the stores continued to sell the same types of products to essentially the same demographic customer base.

Although the stores formerly run by the target company continued to incur an overall loss, Leekes was allowed by the Court to offset part (£1.6m) of the losses brought forward against the profits of the combined business.

It is thus of little surprise that the first foray into restricting losses carried forward announced in the Autumn Statement 2014, whereby banks are limited to claiming loss relief up to 50% of their profits, was swiftly followed by new anti-avoidance measures designed to further restrict relief for trading and other losses carried forward. In particular, companies entering contrived arrangements to turn historic losses of restricted use into more versatile in-year deductions will be prevented from obtaining a tax advantage.

Whether the above arrangement is now considered to be sufficiently contrived to fall within the new measures, only time will tell.

If you have any concern about your profit and loss and how the new anti-avoidance measures may affect your business, please get in touch with your usual UHY adviser.

Roy Maugham, London

Auto-enrolment: the challenges for SMEs

As we have discussed in previous Tax Updates, auto-enrolment has been a popular topic recently. Between now and the end of 2017, all employers with less than 50 employees (at 30 April 2012) will need to set up a pension scheme for their employees and make employer contributions.

As a business owner you will need to select a suitable scheme for your employees, which is required to meet certain standards prescribed by law, or ensure that any existing schemes are fully compliant.

Many employers were of the misconception that auto-enrolment is simply a pensions issue. In fact, it is also a software and payroll issue. Hence, it is vital to plan well in advance.

How do I comply?

The date at which you must have an eligible scheme operational, and start making contributions, is known as your 'staging date'. This varies between employers, and is based upon your PAYE reference and the number of employees you had at 30 April 2012.

You may have already received a letter from The Pensions Regulator (TPR) informing you of your staging date but, if not, you can find it at:
www.thepensionsregulator.gov.uk/employers/staging-date.aspx

You will need your PAYE reference, which can be found on your yellow PAYE payment booklet, in order to access this information. HMRC give a guide as to where this is found on the gov.uk webpage. Alternatively, please contact your usual UHY adviser, who will be able to assist you in obtaining this information.

If you have more than one PAYE scheme (eg. one left from a previous acquisition or you have schemes for different sites/divisions) then your staging date for both schemes will be the earlier of the two.

There are a number of potential providers available and, as an employer, you will need to choose a pension provider for your employees. This is an area where we would recommend that you study the material provided by TPR and speak to us for professional advice if you have questions.

Once you have set up your scheme, you will need to certify to TPR that you have complied with your responsibilities.

What are the penalties for not doing so?

It is recommended that you commence work on setting up a suitable scheme at least nine months prior to your staging date, due to the administrative burden involved. If a suitable scheme is not operational at this date you will become liable to penalties levied by TPR. These start as a fixed penalty of £400 and can then increase with hefty daily penalties, for further non-compliance.

How do I operate an auto-enrolment scheme?

When you have set up your scheme, you will have the following obligations, amongst others.

You will be required to:

1. Identify all eligible employees (this includes certain agency workers).
2. Keep records of any workers/employees that have opted out (please note that as the employer you are not permitted to take any action that encourages your employees to opt out of a scheme).
3. Periodically re-enrol opted out employees (the employee must therefore take action should he/she wish to opt back out again).
4. Monitor employee ages and earnings on an ongoing basis to ensure all eligible employees are identified and automatically enrolled.
5. Ensure that employee and employer contributions are correctly deducted and paid over to the pension provider. Each provider will have their own templates and information requirements for each payment to be correctly allocated. The minimum contribution rates for such schemes are in the table below.
6. Communicate with staff on a regular basis regarding the pension arrangements made.

	Employer minimum contribution	Total minimum contribution (inc employee contribution and tax rebate)
From Staging date to 30 September 2017	1%	2%
1 October 2017 to 30 September 2018	2%	5%
1 October 2018 onwards	3%	8%

Will there be an impact on my existing software?

The 'automatic' aspect of auto-enrolment pensions will necessitate changes to your software – whether by way of an additional module from your existing payroll supplier or replacement of the entire package. Some companies are providing 'middleware' which sits between your own software and the pension provider's portal, though this is likely to be more cumbersome and less automatic than an integrated package. The important point is to review your software at the start of the process.

The next step

Setting up a new pension scheme is likely to involve additional administration over and above what is involved in your usual payroll preparation, as well as additional cost. TPR has already made it clear that it expects businesses to be fully compliant and to be able to certify as such, and that it is willing to levy substantial penalties on businesses who fail to comply.

In order to minimise the administrative burden and the risk of penalties for non-compliance, it is imperative that you act now to be clear when you are obliged to stage and to set up a suitable scheme. As we recommended earlier, you should allow at least nine months to prepare for your staging date and ensure all administration is completed in time.

For more information on setting up your auto-enrolment scheme, or to discuss the options available to you and to reduce the administrative burden, please speak to your usual UHY adviser.

Les Maloney, Chester

The end is nigh...

The recent Budget and the documents released alongside it indicate a sharp escalation in HMRC's 'war' on offshore tax evasion.

The tightening of the ratchet

The scariest of three new measures is the proposed introduction of a 'strict liability' criminal offence for offshore evasion. Strict liability means that if you have undeclared liabilities relating to an offshore account you are, by definition, guilty – the absence of any intention to evade tax will no longer be a defence.

Not so scary, but still alarming if you have an undisclosed account, is the confirmation that more than 90 countries worldwide – including the best known "tax havens" - have now committed to the automatic exchange of taxpayer information by 2018. HMRC estimate that they will receive information including names, addresses, account numbers and balances on up to two million UK taxpayers with offshore accounts. They also anticipate that they will be able to look through trusts and shell companies to identify beneficial owners.

If your response to such threats is a decision to 'come clean', you will find that the options for doing so are to be sharply curtailed. The LDF (the only disclosure route that offers immunity from prosecution) and the Crown Dependencies disclosure facilities will be brought to an early close at the end of 2015. In their place will be a new disclosure facility expected to run to mid-2017. Full details have yet to be announced, but penalties will be higher and there will be no guarantee that criminal prosecutions will not be pursued. This new disclosure facility is being billed as the last chance to disclose before HMRC start to automatically receive information in respect of offshore accounts.

Proceed with caution

It is not illegal to hold an offshore account and it will not become illegal under the measures now announced. However, if you hold such an account you will have to be very careful that you either make full and timely disclosure of income and gains via your tax returns or, if you consider yourself not domiciled in the UK and you wish to take advantage of the remittance basis of taxation, that you are confident as to your status and that you make the appropriate claims. Accidental failure to disclose will not be an excuse.

To anyone who has not previously made full disclosure of income and gains associated with an offshore account, the message from HMRC is clear: disclose now – you have been warned!

For another six months the LDF will remain the best option for disclosures of any real size. If you miss this chance, you should accept that criminal prosecution and even imprisonment is a very real possibility.

UHY Hacker Young's award winning*, specialist tax investigations team has been dealing with disclosures under the LDF since its launch in 2009. If you think you might need to disclose, talk to your usual UHY adviser about the process and about the excellent results that we have achieved for those who have gone down this route before you.

Mark Giddens, London

TAXATION AWARDS 2015 WINNERS

* Taxation Awards 2015 double award winners, Tax Investigations Team and Tax Team in a National Firm

Annual Investment Allowance

A strange question: can you afford not to spend £500,000? No, this is not about how many stocks and shares you can buy, but rather the limit for which businesses can claim a full 100% tax relief for capital expenditure, basically for buying plant and machinery.

What has, in recent years, been a highly advantageous tax break is about to be reduced significantly in January of next year.

As a rule, HMRC do not allow capital expenditure as a deduction against profits but, instead, give capital allowances. Often, the rates allowed are quite low, eg. 18% or even 8%, on a reducing balance basis with the consequence that relief can end up being spread over decades rather than years.

Whilst some items of equipment qualify for special rates of allowances, 100% if they are energy efficient, unfortunately long life assets and integral features of business premises are relegated to the 8% band, even though they may be crucial to the effective running of the trade.

Fortunately, the Chancellor wanted to stimulate businesses and introduced a £250,000pa ceiling for the Annual Investment Allowance (AIA) from January 2013 within which 100% relief may be claimed even if the items in question only normally qualify for the 18% or 8% relief. Whilst he extended this allowance in April 2014 to £500,000pa, it is currently set to reduce to £25,000pa from 1 January 2016, so you will need to act fast.

You should be aware this particular relief does not apply to motor cars (lorries and vans are acceptable), but you can instead buy an electric or hybrid car with a CO_2 rating of below 95gm/km and still obtain a 100% allowance.

If you are not to miss out on this golden opportunity you need to get your skates on and acquire or upgrade your business equipment before 31 December 2015. Special rules will apply if the equipment has not been installed or paid for by 31 December, so please check with your usual UHY adviser who can help. On the 15 July we will be hosting a seminar 'AIA, can you afford not to spend £500,000?', in London. Please see our **website** for further details and registration.

Roy Maugham, London

As is always the case with such advice, everybody's individual circumstances vary and so not every aspect discussed here will be of relevance to you.

We have only touched on each of these areas very briefly and would advise that you contact your usual UHY adviser for further advice on the key issues affecting you and to decide on the most appropriate action(s) to take.

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