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NEWSLETTER

November 2024

October Budget summary

The recent Budget just outlined the future plans of the government, but to get more meat on the bones we will have to wait for the Finance Act, which might also introduce changes to the Budget proposals. Other allowances and rates remain unchanged. A brief summary of the Budget changes reveals the following –

- The rate for employer National Insurances rises from 13.8% to 15%. Also the starting point for the payment of employers contributions reduces from £758pm to £416 pm (both from April 2025)
- Capital Gains Tax increases to 18% for basic rate taxpayers, and to 24% for higher rate taxpayers (from 30th November 2024)
- Business Asset Disposal Relief, normally claimed on the sale of a trading business, is taxed at 14% from April 2025 and from April 2026 at 18%
- Inheritance Tax (IHT) rates are frozen until April 2030
- Unspent pension pots will incur IHT (from April 2027)
- Agricultural and Business property will have zero rate band of just £1million with IHT payable at 20% thereafter (from April 2026)
- Alternative Investment Market shares will attract IHT at 20% (from April 2026)
- The tax and VAT advantages of double cab pickups will end for acquisitions after April 2025

- The term 'Non domiciled' will cease to exist from April 2025 and all taxes will be based on actual residence in the UK
- The 3% SDLT surcharge on the purchase of additional properties will increase to 5% from 30th October 2024
- VAT will be chargeable on private school fees from January 2025.
- 5,000 additional staff are to be recruited by HMRC to ensure compliance with the tax laws
- The minimum wage for those over 21 increases to £12.21 in April 2025, aged 18 to 20 increases to £10.00, and aged 16 to 17 increases to £7.55
- Measures will be taken to prevent Shareholders or Directors from borrowing money from their Companies (from 30 October 2024)

Definition and advantages of 'trading'

From HMRC's viewpoint there are primarily three methods of holding an asset in which they may be interested. Firstly as a hobby, however the item must not be acquired with a view to selling it at a profit at some time in the future. The item, which HMRC call a chattel, includes any other item in the same collection, must not be sold for more than £6,000. It must also be moveable. A further exemption is that it is not taxable if it has moving parts or is a wasting assets. Incidentally whisky which is in a container which allows for evaporation (not drinking) is a wasting asset. The next step up for HMRC is where the asset is acquired to produce an income or growth but is not actively managed on a day to day basis. Rented property, a second home or shares are in this category and are liable to Capital Gains Tax on sale, as well as any income being taxable. There is then a third category which includes most businesses that are trading. There are several tax advantages including qualifying for pension relief, capital allowances, replacement of assets, losses offset against other income and no restriction on interest relief. In addition, one is able to reclaim VAT and there can be lower rates of Inheritance Tax and Capital Gains Tax on the sale of the trade. However there is also a downside in that Class 4 National Insurance may be payable, and there is no annual allowance and lower tax rates as for Capital Gains Tax.

Pension review at 75

Everyone who has a pension policy should review it regularly, and in particular it should be reviewed as one approaches the age of 75. The first port of call should be the pension policy itself as some policies dictate what should happen at the age of 75, and an election or transfer may have to be made. Following that you have basically two choices. Firstly if the policy has not been drawn down on, and you die before reaching 75, it can be left and passed to a beneficiary who can then draw down on it free of tax, after your demise. However if you survive until 75 then it also passes to the beneficiary, but that beneficiary must then pay income tax on any amount withdrawn. The alternative is to encash the policy but then this money will be liable to income tax and then liable to Inheritance Tax when you die. There is no tax relief available for personal contributions after one reaches the age of 75, and many pension companies will not accept contributions. However there is no such restriction on employer contributions provided of course that the individual is still working and the amount is not excessive. The recent Budget intends to make any unspent pension pots liable to IHT from April 2027, which previously passed on death without any IHT.

Salary v. Dividend

The vast majority of small Companies pay their shareholders, who are normally also directors, a small salary for being a director, and the remainder as a dividend for being a Shareholder. This has for many years been the favorable treatment from a tax viewpoint. However, in recent years the balance has been moving towards the larger part of the income being salary. The reasons being that the dividend tax rate was increased, and the annual allowance decreased. Also, the employee National Insurance contributions were reduced from 12% to 8%. The case was even more persuasive for those receiving a state pension as there are no employee contributions. As directors salaries are deductible from company profits (which dividends are not) an increased salary would benefit from the corporation tax rate when it increased from 19% to 25%. However, the

Budget has stopped this trend. The recent Budget makes a much stronger case for a low salary and the balance in dividends because the employers NI has increased from 13.8% to 15% and the amount that this rate starts has been reduced from £9,100 to £5,000 per annum. As a result many directors currently on a salary of £758 per month will have this reduced to £416. However we don't yet know whether the increase in the Employment allowance will affect this.

Round up of recent cases

Krywald v. HMRC 2024 UKFTT TC 09312 – Appeal allowed after error by taxpayers bookkeeper and then wrong advice form HMRC resulted in delays in submitting VAT returns

Professional Game Match Officials v. HMRC 2024 UKSC 29 – The Supreme Court

held that employment existed because there was a mutuality of obligation to provide and undertake work and there was control over the referees

Tesco v. USDAW 2024 UKSC 28 – Tesco lost the case when they tried to dismiss 300 staff and then reemploy them with a benefit excluded

Atkin v. HMRC 2024 UKFTT TC 09276 – The inability to open a self-assessment account or the closure of an HMRC helpline were not valid reasons for a 'reasonable excuse'

Barnes v. HMRC 2024 UKUT TCC 262 – Sky Sports status case confirming the First Tier Tribunal decision that the taxpayer was an employee

Wright & BHS v. Henningson & Chandler 2024 EWHC Ch 06 – The Court held that two directors of British Home Stores were guilty of wrongful trading and fined £18m

Sangha v. HMRC 2024 UKFTT TC 564 – This Tribunal case sets out what documents can reasonably be demanded by HMRC

Winter v. Winter 2024 EWCA Civ 699 – Father promised equal share of his £10m business to his three sons then in his Will just left it all to one – Court ordered that the other two sons be awarded £1 million each

Turner v. HMRC 2024 UKFTT TC 09193 – A £110k VAT penalty for fraudulent trading was chargeable on the sole director after the Company went into liquidation

Simson v. Diamandis 2024 EWHC Ch 850 – Property owned by a Company was sold at undervalue and was held to be a flagrant act of 'unfair prejudice' - the Directors were held to be liable

McCann v. HMRC 2024 UKUT TCC 94 – The Tribunal ruled that the contract with Sky Sports was that of employment – McCann had no other customers and was paid round sum monthly amounts

Gowing v. Ward 2024 EWHC Ch 347 – The Court agreed that the deceased was entitled to restrict a legacy to his grandchildren to just £50 as they did not contact him

Limited Company – Articles of Association

The governance of a Company is controlled by the Companies Act 2006 and this includes a model of the Articles of Association. Companies formed prior to the introduction of the 2006 Act will have a similar set of model Articles, called Table A, and these Articles are not automatically updated to the new Articles when they were introduced in October 2009. The Articles refer to the duties and responsibilities of directors and their appointment and dismissal. It also refers to the issue and transfer of shares and declaration of dividends. It is quite rare for a Company to need to refer to its Articles, and generally this only occurs when there is a dispute between shareholders or directors. It is then that people realise that the Articles are not suitable for their Company. Obviously the best time to review and/or change the Articles is when the Company is formed. However now is not too late.

A copy of the 2006 Act Articles can be found by clicking this link here

This newsletter deals with a number of topics which, it is hoped, will be of general interest to clients. However, in the space available it is impossible to mention all the points which may be relevant in individual cases, so please contact us for personal advice on your own affairs.

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Cover Photograph: River Taff Blackweir November 2024.