Tax Briefing

Autumn 2018

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CHARTERED ACCOUNTANTS

25 YEARS SERVING
BUSINESSES IN SCOTLAND

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MTD: What, when and how

If your business is VAT registered, and the turnover for the last year has exceeded £85,000, you should soon receive a letter from HMRC stating that you must comply with the making tax digital (MTD) rules from April 2019.

The MTD regime requires you to keep all records relating to VAT in a digital format and submit VAT returns through MTD-compliant software. The online VAT return form on gov.uk will be closed to all businesses required to comply with the MTD for VAT regime. This is because HMRC wants to minimise the risk of human error in submission of VAT figures.

The online form will remain open for businesses who have voluntarily registered for VAT and whose annual turnover is under £85,000. But beware, as soon as your turnover for the last 12 months exceeds £85,000 you must comply with MTD from the start of your next VAT period.

You are responsible for keeping your business records in a digital form. This means recording the data from each transaction electronically. You don't have to take a picture of each purchase receipt and sales invoice, but you must record the date of the sale, value excluding VAT and the VAT rate applied. Shops which use retail schemes can keep a digital record of the gross daily takings, so don't have to record each sale separately.

A spreadsheet will qualify as a digital record if the VAT data can be transmitted via a digital link to MTD-compatible software, which submits it to HMRC. The digital link can be as simple as sending the spreadsheet to us by email, so

we can import the data into our software.

Some businesses will prefer to use cloud-based accounting software, which enables people at different locations to access the data simultaneously. The accounting software will also automatically provide a back-up of the data.

If your accounting system hasn't been updated for a while, contact us to discuss a more MTD-compatible model.

Income tax calculations

Every year HMRC reconciles taxpayers' tax liabilities to the tax reported as paid for the individual via PAYE. This is happening now for the 2017-18 tax year.

If the calculation for your tax position shows tax owing, or a tax repayment due, you should receive a copy of the calculation on a form P800. If you are newly retired and have tax to pay you may receive a simple assessment form PA302. In this case the tax will be payable by 31 January 2019.

If you complete a self assessment tax return each year you should not receive a tax calculation on a form P800 or PA302, as all your tax should be dealt with on your tax return. However, sometimes the HMRC computer does not link the PAYE record to the self assessment return, so duplicate tax calculations are issued. If you receive a form P800 or PA302 for a year for which you have submitted a tax return, please contact us immediately.

If you have other income such as rent, dividends or interest, those amounts may be estimated on the P800 calculation, so check the figures carefully against your bank statements. HMRC often uses estimated figures of pension contributions or charity donations based on what was paid in previous years. It is important to

check that any tax relief given for such payments relates to the correct year to avoid underpaying tax.

Contractor loan schemes

Contractors working through their own companies from 2000 onwards may have been told by their employment agency that it was tax efficient to accept payment for their services structured as a loan. Some employees were also provided with loans in place of part or all of their salary where their employer used an Employee Benefit Trust (EBT).

HMRC now believes that as these loans were never meant to be repaid, they were in fact disguised remuneration for the employee or contractor. HMRC is demanding that the taxpayers who received the loans should pay tax and national insurance (NI) on the gross amount received, even if that was years ago.

The amount of tax owing on the loans is often so large that the taxpayer cannot hope to raise the amount due in one go. HMRC realises this and so will allow taxpayers to settle the total tax and NI due over five years. However, this spreading of the liability is generally only permitted if the taxpayer's income for 2018-19 is expected to be less than £50,000.

Taxpayers with higher income can negotiate a shorter or longer instalment plan on an individual basis. Interest will be charged on all late paid tax at the standard HMRC rate of 3.25%.

If you were caught up in a loan scheme you need to contact HMRC before 30 September 2018 and negotiate how to settle any outstanding tax due.

Requirement to correct letters

HMRC is writing to taxpayers who may own assets overseas or have a source of offshore income. These assets could be anything from a Jersey bank account to an overseas holiday let, or more seriously trusts or companies registered overseas.

The letters inform the taxpayers that they must declare any overseas income or gains on their UK tax return and correct any omissions from past years' returns by 30 September 2018.

From this date HMRC will begin exchanging data on financial accounts directly with 100 other countries under the common reporting standard. This will make it much easier for HMRC to identify offshore tax evasion quickly by comparing accounts or assets owned abroad to declarations made in the UK.

If you get caught out for not declaring overseas taxable income, transactions or gains after September 2018 you could face a penalty of 200% of the tax due. This penalty can apply even if you believed the income or gain was not taxable in the UK, and you had no intention to evade UK tax. However, if you took qualified advice that determined that the income was not taxable in the UK, you will have a reasonable excuse for not declaring the amount on your UK tax return.

There is not much time left to make a full correction and pay all the tax due, but if you contact HMRC before midnight on 30 September 2018 using one of its formal disclosure facilities, you will have longer to submit your full disclosure.

VAT option to tax

Commercial properties which are more than three years old will not have VAT attached to their sale or rent unless the owner or leaseholder has opted to apply it. This is called the "option to tax".

There are three key questions to ask about your own commercial property:

- have you ever made an option to tax on this property?
- if you did where is the evidence? This would be a copy of form VAT 1614 and acknowledgment from HMRC; and
- if the option to tax was made more than 20 years ago, is it now appropriate to revoke that election?

All these questions will become urgent if you wish to sell the property as the buyer's legal team will ask for evidence that VAT is correctly charged on the sale. Some businesses cannot recover VAT, so they would prefer to buy or lease a building without VAT.

If you believe that an option to tax is in place but there is no

evidence, you could write to HMRC asking for a copy of the election but do not hold your breath. HMRC will take weeks to reply and if the election was made many years ago they may no longer have the paperwork. If you have never let the property and VAT was not charged on the original acquisition, it is probably safe to assume that an option to tax has never been made.

It is a common misunderstanding that once a property is the subject of an option to tax it remains an "opted property" when sold. This is not the case. Each person with an interest in the property can make an independent decision whether to opt to tax or not.

Pension lump sum

If you have taken a lump sum from your pension fund you may have had excess tax deducted by the pension company, but you can reclaim it.

Although 25% of your pension savings can be drawn out tax free, the pension company normally interprets this as being 25% of any single withdrawal, leaving 75% of the lump sum to be taxed at your marginal tax rate. What's worse, if the lump sum is the first withdrawal you have made from the pension scheme the company will apply an emergency PAYE code. This results in you having far more tax deducted under PAYE than is due.

There are two ways you can get this tax back:

- if you are not expecting to take further pension payments in the same tax year you can reclaim the tax on the lump sum using form P53Z or P53. We can submit those forms for you; or
- if you expect to take further pension payments in the same year your tax repayment should be dealt with through your PAYE code. The tax refund should be made when your next pension instalment is paid.

The second method requires an adjustment to your PAYE code, which you can request through your online personal tax account. Alternatively, you can phone HMRC to ask for your code to be changed. We can phone HMRC for you if we have authorisation to act on your behalf.

Landfill tax

As an ordinary business you may think that landfill tax is someone else's problem. You pay for your

waste to be taken away and the waste disposal company is responsible for paying the landfill tax when the waste goes into a hole, rather than to incineration or recycling.

However, since 1 April 2018 you could be responsible for landfill tax if you allow your business waste to be disposed of illegally, even if you do not dump it yourself. Anyone involved in the waste chain such as a haulier, broker, waste originator or landowner can be liable for landfill tax if they allow disposal of waste at an unauthorised site, ie one without an environmental disposal permit.

As well as having to pay the landfill tax (£88.95 per tonne for active waste, or £2.80 per tonne for all other waste) you could also find yourself liable for penalties for non-compliance or even face criminal prosecution.

You can avoid such charges if you carry out reasonable due diligence on where your waste is going, as set out in the Defra Waste Duty of Care Code of Practice. If you follow this procedure you will not be penalised even if your waste is found to be illegally dumped.

Reclaim SDLT, LTT or LBTT

If you have acquired a new home since 1 April 2016 you should be aware of the 3% stamp duty land tax (SDLT) supplement which applies to purchases of second and additional homes.

This 3% supplement was copied in Scotland for land and buildings tax (LBTT) and in Wales for land transaction tax (LTT) from 1

April 2018. But there are different conditions for relief from the 3% supplement in each country. Scotland has recently amended its law to provide relief from the 3% supplement where a couple buy a home together to replace their main home, but their former home was held in the sole name of just one of the individuals. If you fall into this category, you can now apply for a refund of the additional LBTT paid, right back to April 2016.

If you paid the SDLT supplement on the purchase of your property, it is worth checking whether a refund is due. For example, if the property acquired was not 100% residential the supplement is not due.

Where the new property was acquired as your main home and the old home was disposed of within three years, a refund of SDLT may be due. But don't hang around, as a claim for overpaid SDLT must be made within three months of the sale of the previous main residence or within 12 months of the filing date of the land transaction return, whichever is later.

Penalties for late PAYE

All payroll payments and deductions must be reported to HMRC under real time information (RTI).

The main RTI report is the full payment submission (FPS), which should be sent on or before the day the payment is made to the employee. If no payments are made for the pay period, you need to submit an employer payment summary (EPS) to HMRC.

To ensure HMRC receives the RTI submissions at the right time, it is good practice to do things in this order:

1) run the payroll;
2) make the RTI submissions;
3) pay the employees.

If the HMRC computer does not log that an FPS or EPS was received when expected, it can be programmed to issue an automatic penalty. However, HMRC has built in a three-day grace period so the computer will not issue a penalty if the RTI submissions are made within three days of the employees' payday.

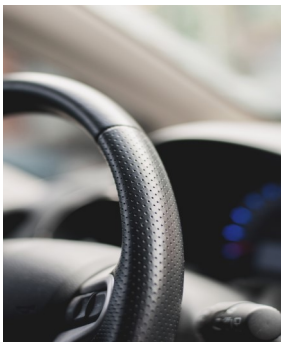
This grace period is not an extension to the deadline; if you consistently file within this three-day window you may be contacted by HMRC and considered for a penalty. You are permitted one late RTI filing in the year before a penalty is issued.

If you need to file an FPS late, get your excuse in early by including the code letter in the late reporting field in the submission. The code for having a reasonable excuse is "G".

If HMRC has sent you a penalty notice that you do not agree with, you have 30 days to appeal, which can be done by letter or online. We can help you with that.

Company cars

Electric cars are creating a buzz in environmentally-conscious companies, and not just because of the noise they make. They are cheap to run and the price of many models is coming down.



If your employer provides you with an electric company car or van, we have some good and bad news for you.

Good: From 1 September 2018 your employer can pay you 4p per mile for every business journey you make in the electric vehicle. If you charge the vehicle at the company's premises there is no taxable benefit for the use of that power. So you get paid 4p per mile for absolutely free fuel!

If you own the electric car personally you can also charge it for free at work with no taxable benefit for the use of the electricity. When you undertake business journeys in your own electric car your employer can pay you 45p per mile, tax free, for the first 10,000 business miles driven in the tax year, and 25p per mile for any additional mileage.

Bad: The amount you are taxed on for having free use of a company provided electric car is currently 13% of its list price when new, but this is due to leap to 16% of the list price for 2019-20. Strangely the taxable benefit will drop to 2% of list price from 6 April 2020.

If your company vehicle is an electric van, which you use for private journeys other than commuting, you are taxed on a benefit of £1,340 for 2018-19. This taxable benefit is likely to rise to around £2,000 for 2019-20.