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Newsletter

Extracting income from a family company

When determining the most tax-efficient way to extract funds from a family company, there are a number of factors that need to be considered. For instance, the most efficient route will depend on the differing rates of income tax, corporation tax, national insurance contributions (NICs) and capital gains tax (CGT).

From 6 April 2011 the rates of Class 4 and Class 1 NICs increased by 1%, while on 1 April the main rate of corporation tax fell by 2% and the small profits rate decreased by 1%. Income tax rates remain unchanged. Here we consider what the changes could mean for family companies.

Bonus versus dividend

In the main, the profit extraction debate centres on whether it is more efficient to draw a salary or to pay a dividend – each has its merits.

From the company perspective, money paid by way of a bonus or salary is deductible for corporation tax purposes. However the company, as employer, is also liable to pay employer's NICs (13.8%). The bonus or salary is taxable in the hands of the recipient (under PAYE) and primary Class 1 NICs are also payable.

Dividends, meanwhile, are paid out of retained profits and as such they are not deductible for corporation tax purposes, but there are no NICs to pay on dividends. Further, there is no additional tax to pay when received by a basic rate taxpayer. Higher and additional rate taxpayers effectively pay tax at the higher or additional dividend rates of 32.5% and 42.5% respectively (extra tax of 25% and 36.11% of the net dividend). When paying dividends it is important that the company has sufficient distributable profits and dividends are properly declared in accordance with company law requirements. Dividends have to be paid to shareholders in the ratio that they hold shares unless there is a waiver or different classes of shares. Bonuses can be allocated as the directors wish.

To maintain benefit and state pension entitlement, it may be advisable to pay a small salary of between the lower earnings limit and secondary threshold for NIC purposes (between £102 and £136 per week for 2011/12).

Impact of tax rates

Falling corporation tax rates (26% main rate and 20% small profits rate from April 2011), and rising NI rates, swing the pendulum in favour of dividends. From April 2011, the combined rate of employer and main rate employee NICs (13.8% + 12%) is higher than the small profits rate of corporation tax (20%), meaning that the NIC savings associated with a dividend outweigh the loss of corporation tax relief. However, there is no substitute for conducting a thorough assessment before taking action, as this is the only way to reflect all aspects of an individual's personal circumstances.

Capital versus income

Although options for extracting profits in the form of capital may be limited, with CGT rates currently at lower levels than income tax rates, combined with the availability of the CGT annual exemption, where the opportunity to withdraw capital is available, this is likely to be an attractive option from a tax perspective.

Please note, this is an abbreviated summary and, as ever, it is important to consider the wider commercial goals of the company. Please contact us for advice.

Inside this Issue...

National Minimum Wage rates to rise

The Government has confirmed that the main adult rate of the National Minimum Wage (NMW) will rise by 15p – or 2.5% – to reach £6.08 later this year.

In addition, the NMW for 18-20 year olds will rise by 6p to £4.98 an hour, while the rate for 16-17 year olds will climb by 4p to £3.68 an hour. The minimum hourly rate for apprentices will go up by 10p to £2.60.

The decision was based on the recommendations of the Low Pay Commission and is expected to apply to more than 890,000 of Britain's lowest-paid workers.

Under a new scheme, which came into effect on 1 January 2011, employers who deliberately pay their staff less than the NMW may now have their breaches publicised by the Department for Business, Innovation and Skills.

More information on the NMW is available on the Business Link website: www.businesslink.gov.uk

New measures to target tax evaders

After conducting a series of campaigns to encourage the disclosure of undeclared income or gains abroad, the Government has introduced new measures to clamp down on tax evasion. Changes include increased levels of scrutiny and harsher penalties for those who deliberately evade tax.

Managing Deliberate Defaulters

Under the Managing Deliberate Defaulters (MDD) programme, individuals who deliberately evade tax will now be subject to detailed inspection for up to five years. The level and term of monitoring will depend on the seriousness of the offence, but HMRC does not envisage that anyone will be released from the scheme within two years.

There are a variety of ways that HMRC can now monitor a deliberate defaulter's tax affairs. These may include:

- making announced or unannounced inspection visits to carry out pre-return checks of their books and records
- asking for certain records and additional information to be sent in with the individual's tax return
- conducting in-depth compliance checks into all or any part of the person's tax affairs
- observing and recording the person's business activities and cross-checking details in their accounts
- requiring more frequent VAT returns or withdrawing certain favourable VAT schemes such as cash accounting, annual accounting, the flat-rate scheme and retail schemes.

If HMRC finds that a person has continued to deliberately evade tax, it may instigate criminal proceedings against that person. From April 2011 where someone has deliberately evaded tax of more than £25,000 HMRC can also publish the person's name and other details.

Harsher penalties

In addition, on 6 April 2011 new penalties came into force for offshore non-compliance relating to income tax and capital gains tax (CGT). Under the new rules, penalties are linked to the tax transparency of the territory in which the income or gain arises. Where it is harder for HMRC to get information from another country, the penalties for failing to declare income or gains arising in that country will be higher.

All offshore jurisdictions are divided into three categories and the classification determines the level of the penalty that is applied, as shown in the table below. Details of which territories are in 'category 1' and 'category 3' can be found at: **www.hmrc.gov.uk/news/territories-category.htm**. All other territories (except the UK) are in 'category 2'.

Category	Transparency of territory	Penalty *(from 6 April 2011)*
Category 1	UK Territories with automatic exchange of information on savings with the UK	The penalty remains the same – up to 100%
Category 2	Territories which exchange information on request with the UK Least developed countries without information-sharing agreements with the UK	The penalty is now 1.5 times that due under the previous rules – up to 150%
Category 3	Territories which do not exchange information with the UK	The penalty is double that due under the previous rules – up to 200%

If a person can demonstrate that they have taken reasonable care to get their tax right, they may escape a penalty. Similarly, HMRC may not apply a penalty where an individual has a reasonable excuse for a failure to notify taxable income.

Where penalties are due, HMRC can reduce them depending on how helpful the individual is in assisting it to establish the correct amount of tax due.

The first Self Assessment returns affected will be for the 2011/12 tax year, with paper returns due to be filed by 31 October 2012, and electronic returns by 31 January 2013.

Please seek advice if you have concerns about any of the issues raised here.

2011 Budget: key points for business

The Chancellor's Budget on 23 March included a range of measures intended to boost enterprise. Here we provide an overview of some of the key points for businesses.

Corporation tax

The main rate of corporation tax fell by 2% to 26% in April – not by 1% as previously announced. The main rate of corporation tax will be reduced to 25% for the financial year commencing 1 April 2012 and to 24% for the financial year commencing 1 April 2013, before reaching 23% by 2014.

Business regulations

The Budget confirmed the scrapping of £350 million of business regulations and the introduction of a three-year moratorium on new regulations for firms with fewer than 10 staff.

The measures included revoking regulations that would have given parents of children up to the age of 17 the right to flexible working hours from April 2011. The Government has also abolished plans to extend the 'time to train' regulations to companies with less than 250 members of staff.

Prior to the Budget, the Government had announced its intention to reduce health and safety red tape by ending automatic health and safety inspections in medium and low risk industries. Health and safety inspections will instead focus on high risk sites such as energy, nuclear sites and chemical industries.

Business rate relief

The Government intends to offer up to 100% business rate discount for five years to businesses located in any of the 21 new Enterprise Zones. In addition, the small business rate relief 'holiday' will be extended by one year from 1 October 2011.

The Enterprise Investment Scheme

The Enterprise Investment Scheme (EIS) and Venture Capital Trusts will be reformed. This includes raising the rate of EIS income tax relief to 30% from April 2011 subject to State Aid approval.

Entrepreneurs' Relief

The Chancellor announced that the lifetime limit for Entrepreneurs' Relief would rise from 6 April 2011 to £10 million. The increased limit applies only to qualifying disposals on or after that date.

Research and Development (R&D)

The additional corporation tax deduction given to SMEs for qualifying R&D expenditure has increased from 75% to 100%, giving a total deduction of 200%. This applies for expenditure incurred on or after 1 April 2011. A further increase to 125% will have effect for expenditure incurred on or after 1 April 2012.

Please contact us to discuss how the Budget announcements may affect you and your business.

Increase in late filing penalties

A new penalty regime for late filing and late payment of income tax through Self Assessment has now come into effect.

Under the new framework, which applies to 2010/11 tax returns, the penalties for submitting tax returns late have risen significantly. It means that a return filed six months after the deadline could attract a fine of at least £1,300.

According to HMRC, the old £100 penalty failed to act as a deterrent. It hopes the new harsher penalty system will therefore encourage people to 'submit returns as soon as possible'.

The new penalties for filing tax returns late are as follows:

- **Day one** – Individuals will be charged an initial penalty of £100, even if they have no tax to pay or have already paid all the tax owed
- **Over three months late** – Individuals will be charged an automatic daily penalty of £10 per day, up to a maximum of £900
- **Over six months late** – Individuals will be charged further penalties, which are the greater of 5% of the tax due or £300
- **Over 12 months late** – Individuals will be charged yet more penalties, which are the greater of 5% of the tax due or £300. In serious cases people face a higher penalty of up to 100% of the tax due.

Meanwhile, the penalties for paying tax late are:

- **30 days late** – Individuals will be charged an initial late payment penalty of 5% of the tax unpaid at that date
- **Six months late** – Individuals will be charged a further late payment penalty of 5% of the tax that is still unpaid
- **12 months late** – Individuals will be charged a further late payment penalty of 5% of the tax that is still unpaid.

The above penalties are levied on top of the interest that HMRC will charge on all outstanding amounts, including unpaid penalties, until payment is received.

If you have any questions or concerns about the changes, please contact us.

Business Round-Up

Revised fuel rates and mileage allowances

HMRC has issued new fuel advisory rates, which apply to all relevant journeys made on or after 1 March 2011.

The advisory fuel rates apply to company cars only and are accepted either for employers reimbursing employees for the cost of fuel for business mileage, or for employees reimbursing employers for the cost of fuel for private mileage.

The rates are usually revised in December and June, although HMRC can issue new rates if fuel prices fluctuate by 5% or more from the published rates. The new rates can be viewed on the HMRC website.

The Government has also revised the approved mileage allowance payments (AMAPs) rates, which apply for employees using their own vehicles for business journeys.

As announced in the 2011 Budget, the higher rate **increased from 40p per mile to 45p** with effect from 6 April 2011. The higher rate applies for the first 10,000 miles of business use – the rate beyond 10,000 miles remains at 25p. It is the first time any of the rates have risen since 2002.

Simplifying the tax system

Ahead of the 2011 Budget, the Office of Tax Simplification (OTS) published its final recommendations for reforming the UK's tax system.

The OTS, which was tasked with conducting a review of the UK's tax relief system, has identified 47 reliefs which it says should be abolished and 17 which need to be simplified. It proposes that a further 37 reliefs should be examined in greater detail.

The report recommends the abolition of tax-free luncheon vouchers and relief on late night taxis. Others identified for removal include trade union subscriptions and the business premises renovation allowance.

Among those it suggests simplifying are: Entrepreneurs' Relief; principal private residence relief; real estate investment trusts; and the Enterprise Investment Scheme. The OTS also called for a wholesale review of inheritance tax and capital gains tax.

In the Budget, the Chancellor agreed to abolish 43 'complex reliefs' but the most significant announcement for the long-term was the Government's intention to consult on the possibility of 'merging' national insurance and income tax in future years.

StartUp Britain scheme is launched

The Government recently launched a new scheme aimed at encouraging would-be entrepreneurs to start up their own business. The StartUp Britain campaign provides new enterprises with help worth about £1,500 in areas such as IT training and internet advertising.

Those firms participating in the scheme include AXA, Barclays, BlackBerry, Experian, Google, Intel, Microsoft, McKinsey & Co, O2 and Virgin Media.

The initiative is part of a wider government programme aimed at boosting private sector growth. Further information is available at **www.startupbritain.org.**

Web Watch

Essential sites for business owners

www.contractsfinder.co.uk

New website which allows businesses to access public sector contracts

www.smallbusiness.co.uk

Advisory guides and topical news for small business owners

www.xperthr.co.uk

Information and advice for employers, including the latest employment law changes

www.startupbritain.org

Home of the Government's new scheme for entrepreneurs

Reminders for your Summer Diary

June 2011

30 End of CT61 quarterly period.

Annual adjustment for VAT partial exemption calculations (March VAT year end).

July 2011

6 Deadline for submission of Form 42 (transactions in shares and securities).

Deadline for submission of EMI40 (EMI Annual Return).

File Taxed Award Scheme Returns, file P11Ds, P11D(b)s and P9Ds. Issue copies of P11Ds or P9Ds to employees.

14 Due date for income tax for the CT61 period to 30 June 2011.

19/22 Quarter 1 2011/12 PAYE remittance due.

Final date for payment of 2010/11 Class 1A NICs.

31 Second self assessment payment on account for 2010/11.

Annual adjustment for VAT partial exemption calculations (April VAT year end).

Liability to 2nd £100 penalty arises for 2010 Tax Return still not filed.

5% surcharge on any tax unpaid for 2009/10.

Deadline for tax credit Annual Declaration (if estimated, final figures required by 31/01/12).

August 2011

2 Submission date of P46 (Car) for quarter to 5 July.

31 Annual adjustment for VAT partial exemption calculations (May VAT year end).