2016 AUTUMN STATEMENT – more detail

We recently sent you our Autumn Statement summary. Draft legislation has now been published and we are providing further information on specific areas which we thought you might find helpful in answering any queries your clients may have.

Salary sacrifice

Legislation will limit the income tax and employer NICs advantages where:

- benefits in kind are offered through salary sacrifice or
- where the employee can choose between cash allowances and benefits in kind.

The taxable value of benefits in kind where cash has been forgone will be fixed at the higher of the current taxable value or the value of the cash forgone.

The new rules will not affect employer-provided pension saving, employer-provided pensions advice, childcare vouchers, workplace nurseries, or Cycle to Work. Following consultation, the government has also decided to exempt Ultra-Low Emission Vehicles, with emissions under 75 grams of CO_2 per kilometre.

This change will take effect from 6 April 2017. Those already in salary sacrifice contracts at that date will become subject to the new rules in respect of those contracts at the earlier of:

- an end, change, modification or renewal of the contract
- 6 April 2018, except for cars, accommodation and school fees when the last date is 6 April 2021.

Comment

The legislation will only apply where cash is being given up in exchange for a benefit. So employees with employment contracts which provide a salary with the choice of a basket of benefits on top of the salary will not be taxed on the benefits by reference to the proposed new rules.

Changes to termination payments

Changes from 6 April 2018 will align the rules for tax and employer NICs by making an employer liable to pay NICs on any part of a termination payment that exceeds the £30,000 threshold. It is anticipated that this will be collected in 'real-time'.

In addition, all payments in lieu of notice (PILONs) will be both taxable and subject to Class 1 NICs. This will be done by requiring the employer to identify the amount of basic pay that the employee would have received if they had worked their notice period, even if the employee leaves the employment part way through their notice period. This amount will be treated as earnings and will not be subject to the £30,000 exemption.

Finally, the exemption known as foreign service relief will be removed and a clarification made to ensure

that the exemption for injury does not apply in cases of injured feelings.

Off-payroll working in the public sector - reform of IR35

The intermediaries legislation (also known as IR35) is designed to ensure that individuals who work through their own company pay employment taxes in a similar way to employees.

Changes are being made to the rules in relation to engagements in the public sector. These changes will:

- move the decision of whether to apply the IR35 rules from the individual worker's own service company to the public sector body, agency or third party paying them
- the public sector engager or agency will be treated as an employer for the purposes of tax and Class 1 NICs (including employer NICs) and the amount paid to the worker's intermediary will be deemed to be a payment of employment income to that worker
- the 5% allowance used by the worker's intermediary for certain business expenses will be removed for those contracts with the public sector.

HMRC will provide a new digital tool to help identify whether engagements fall within the new rules, which will apply to contracts entered into, or payments made, on or after 6 April 2017.

The changes are expected to raise £265 million in 2017/18.

Abolition of Class 2 NICs

From 6 April 2018 Class 2 NICs will be abolished and Class 4 NICs reformed to include a new threshold (to be called the Small Profits Limit).

Access to contributory benefits for the self-employed is currently gained through Class 2 NICs. After abolition, those with profits between the Small Profits Limit and Lower Profits Limit will not be liable to pay Class 4 NICs but will be treated as if they had for the purposes of gaining access to contributory benefits. All those with profits at or above the Class 4 Small Profits Limit will gain access to the new State Pension, contributory Employment and Support Allowance and Bereavement Benefit.

Those with profits above the Lower Profits Limit will continue to pay Class 4 NICs.

Class 3

From 6 April 2018 Class 3 NICs, which can be paid voluntarily to protect entitlement to the State Pension and Bereavement Benefit, will be expanded to give access to the standard rate of Maternity Allowance and contributory Employment and Support Allowance for the self-employed.

Comment

The abolition of Class 2 impacts self-employed people who do not have a full qualifying year for benefit entitlement purposes. They will have the option to pay voluntary Class 3 NICs where currently they may be able to pay voluntary Class 2 NICs. However, Class 3 NICs are currently £14.10 per week compared to Class 2 NICs which are currently £2.80 per week.

Special provisions will be made for share fishermen and volunteer development workers.

New tax allowance for property and trading income

At Budget 2016, the government announced two new £1,000 allowances for property and trading income to take effect for income arising from 6 April 2017.

The government also announced at Autumn Statement 2016 that the trading allowance may also apply to certain miscellaneous income to the extent that the £1,000 trading allowance is not otherwise used.

Further detail has now been released:

- where the allowances cover all of an individual's relevant income (before expenses) then they will no longer have to declare or pay tax on this income. Those with higher amounts of income will have the choice, when calculating their taxable profits, of deducting the allowance from their receipts, instead of deducting the actual allowable expenses. The trading allowance will also apply for Class 4 NICs
- the new allowances will not apply to income on which rent a room relief is given
- the new allowances will not apply to partnership income from carrying on a trade, profession or property business in partnership.

Tax treatment for partnerships

Following consultation the government will legislate in Finance Bill 2017 to clarify and improve certain aspects of partnership taxation. This will include legislation to ensure profit allocations to partners are fairly calculated for tax purposes.

Draft legislation has not been published on 5 December but will be in early 2017.

Enlarging Social Investment Tax Relief

Significant amendments to the Social Investment Tax Relief (SITR) will be legislated for in Finance Bill 2017 to:

- increase the amount of investment a social enterprise may receive over its lifetime to £1.5 million, for social enterprises that receive their initial risk finance investment no later than seven years after their first commercial sale. The current limit of €344,000 over a rolling three year period will continue to apply to older social enterprises
- reduce the limit on full-time equivalent employees to below 250 employees
- exclude certain activities, including asset leasing and on-lending. Investment in nursing homes and residential care homes will be excluded initially. However the government intends to introduce an accreditation system to allow such investment to qualify for SITR in future
- exclude the use of money raised under the SITR to pay off existing loans
- clarify that individuals will be eligible to claim relief under the SITR only if they are independent from the social enterprise
- introduce a provision to exclude investments where arrangements are put in place with the main purpose of delivering a benefit to an individual or party connected to the social enterprise.

The changes will take effect for investments made on or after 6 April 2017. The government intends to publish the draft legislation by the end of January 2017.

Corporation tax deductions for contributions to grassroots sports

Currently, a relief for corporation tax on payments to sports clubs or in connection with sporting events is available if the sporting body is a charity or a Community Amateur Sports Club.

It is proposed to extend the circumstances in which contributions to grassroots sports can be deducted from taxable profits. Companies will be able to make deductions for all contributions to grassroots sports through recognised sport governing bodies, and deductions of up to £2,500 in total annually for direct contributions to grassroots sports. Sport governing bodies will be able to make deductions for all their contributions to grassroots sports.

This measure will have effect in relation to qualifying expenditure incurred on or after 1 April 2017.

Substantial Shareholding Exemption (SSE) reform

Changes are proposed to some of the qualifying conditions for the SSE. The good news is that the changes remove some of the obstacles of qualifying for SSE.

- The condition that the investing company is required to be a trading company or part of a trading group is being removed.
- The condition that the investment must have been held for a continuous period, at minimum, of 12 months in the two years preceding the sale is being extended to a continuous period of 12 months in the six years preceding the sale.
- The condition that the company in which the shares are sold continues to be a qualifying company immediately after the sale is withdrawn, unless the sale is to a connected party.
- For a class of investors defined as Qualifying Institutional Investors, the condition that the company in which the shares were sold is a trading company has also been removed. The draft legislation contains a list of Qualifying Institutional Investors.

The changes have effect for disposals on or after 1 April 2017.

Non-UK domiciles

A number of changes are to be made from 6 April 2017:

- for individuals who are non-UK domiciled but who have been resident for 15 of the previous 20 tax years or
- where an individual was born in the UK with a UK domicile of origin and resumes UK residence having obtained a domicile of choice elsewhere.

Such individuals will be classed as 'deemed' UK domiciles for income tax, CGT and IHT purposes and will be assessable on worldwide income and gains. They will not be able to access the remittance basis.

Legislation will allow a non-UK domiciled individual who has been taxed on the remittance basis to transfer amounts between overseas mixed fund bank accounts without being subject to the offshore transfer rules. This will allow the different elements within the accounts to be separated, thereby allowing clean capital to be remitted to the UK in priority to income and gains.

The draft legislation also provides that the market value of an asset at 5 April 2017 will be able to be used as the acquisition cost for CGT purposes when computing the gain or loss on its disposal where the asset was situated outside the UK between 16 March 2016 and 5 April 2017. This will apply to any individual who becomes deemed UK domicile in April 2017, other than one who is born in the UK with a UK domicile of origin.

There are also a number of tax changes which modify the tax treatment of settlor-interested trusts in respect of overseas asset trusts.

Offshore avoidance

As part of the continuing clampdown on offshore avoidance, the government will introduce legislation requiring taxpayers who have previously undeclared UK tax liabilities in respect of offshore interests to correct that position by disclosing the relevant information to HMRC.

The new rules will apply to those who have not declared the right amount of UK tax in respect of offshore interests on or before 5 April 2017 as regards:

- a failure to notify chargeability
- a failure to make a return
- the delivery of inaccurate document to HMRC

in relation to income tax, IHT or CGT, assuming no rectification on or before 5 April 2017.

Taxpayers within the scope of the new rules will be required to correct that position on or before 30 September 2018. Failure to do so will lead to new sanctions. These include, in the most serious cases, an asset-based penalty of up to 10% of the value of the relevant asset and the ability for HMRC to name those who have failed to correct.

HMRC example

A taxpayer who delivered an inaccurate return to HMRC by omitting a source of offshore income will be required to provide sufficient information to HMRC to allow that inaccuracy to be corrected by HMRC assessing the under-declared tax.

In addition, the government will consult on a requirement for businesses that create or promote complex offshore financial structures to notify HMRC of their creation and related client lists and will be targeted at structures which represent a higher risk of being used for evading UK taxes.

Tax simplification

The government has welcomed the reviews of the Office of Tax Simplification (OTS) on a range of issues, including the alignment of income tax and NICs, the design of a look-through taxation system, the Sole Enterprise with Protected Assets model, and an interim paper on the Corporation Tax computation.

The government responded to the reviews at Autumn Statement 2016 and will take the findings of the OTS into account as it continues to work to simplify the tax system to make it 'fair and sustainable'.

However, the proposal to move the computation of NICs to a cumulative basis will not go ahead. To quote the Chancellor:

'…there are potential gains from moving NICs onto an annual basis – including making the interaction between income tax and NICs easier to understand. However, the reform would also be a major upheaval, with consequences for the labour market and a large number of individuals and businesses. On the basis of the scale of change required, I do not consider now to be the right time to make this major reform but I am grateful to you for bringing these issues to light.'

The government has now asked the OTS to carry out two further reviews on aspects of the VAT system and on Stamp Duty on share transactions.

Making Tax Digital

As you will be aware, the government published six consultations on Making Tax Digital in the summer. In addition, HMRC sought to gather views from businesses, agents and software providers on the proposals which included 15 face-to-face events across the UK and 14 webinars (with over 3,000 participants). There have been a large number of responses from professional bodies and over 1,200 responses to the online survey.

To ensure that the views of respondents to the consultations are fully considered, the government will publish its response to all of the consultations, together with draft Finance Bill 2017 legislation, in January 2017.

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