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Newsletter

Swiss bank accounts targeted

HMRC will be writing to UK residents and organisations holding Swiss bank accounts with the HSBC bank in Geneva who may not have reported all of their income and gains.

This is as a result of information received last year under a tax treaty which revealed that over 6,000 individuals, companies, trusts and other bodies held accounts and investments with HSBC in Geneva.

The move is part of a wider attack on Swiss accounts which includes a new agreement, struck between HMRC and the Swiss authorities, under which funds of UK taxpayers in Switzerland will face a one-off deduction of between 19% and 34% to settle past tax liabilities.

Furthermore, from 2013, a new withholding tax of 48% on investment income and 27% on gains will apply to those who have not previously told HMRC about their Swiss assets. The new charges will not be levied if instead the taxpayer authorises a full disclosure of their tax affairs to HMRC.

If you do receive any contact from HMRC directly please get in touch with us as soon as possible. In addition, the Swiss deal does not necessarily sort out past arrears of tax. That requires a full voluntary disclosure to HMRC but there may be more effective ways of resolving past arrears, so please talk to us if you feel this is an area that may impact on you.

SPRING 2012

The location lottery

Enterprise Zones (EZs) are part of the Government's plans to reduce burdens on the private sector to enable it to drive growth and job creation. Following the establishment of 24 new EZs in 2011, the Government has now announced that 6 selected zones are to benefit from 100% First Year Allowances (FYA) on qualifying plant and machinery.

Location winners

The locations which have been selected for these proposals are the designated assisted areas within the Black Country, Humber, Liverpool, North Eastern, Sheffield and Tees Valley.

The prize

The proposals apply to expenditure on certain plant and machinery for use primarily in an area specifically designated at the time the expenditure is incurred. A 100% FYA means that capital expenditure can be deducted in full for tax relief in the period in which it is incurred. This facility will be in addition to other capital allowance reliefs already available to all businesses. However, there are no specific tax incentives for building expenditure as there was with the old EZs of the 1980s era.

As businesses generally will only have 100% relief on plant and machinery for the first £25,000 annually (excluding items which separately qualify as 'energy saving type plant') from April 2012, this may be attractive.

Companies only

Only companies within the charge to corporation tax will be able to qualify for these FYA. Certain companies 'in difficulty' or operating in certain industries, for example, agricultural production, fisheries, coal and steel, are excluded. Expenditure on transport and related equipment for the road freight and air transport sectors is also excluded as well as any expenditure taken into account for other State aid grants/payments.

The other key conditions include the following:

- expenditure must be incurred in the five year period from 1 April 2012 to 31 March 2017 inclusive
- expenditure must relate to a new business, expansion of a business or a new activity relating to a fundamental change of business product or service provided
- plant must be new, unused and cannot include replacement expenditure of existing plant.

If this is an area which is of interest and you require further guidance on eligibility please do contact us.

ER success

Entrepreneurs' Relief (ER) was increased from April 2011 to charge qualifying gains of up to £10m per person at only a 10% rate of tax. Compared to other tax rates, this is clearly a great deal but it is important to meet the necessary conditions. In a recent case on ER, one particular scenario was covered.

ER can potentially apply to a disposal of '…the whole or part of a business…' but not the sale of business assets per se. The case concerned the meaning of 'what is part of a business?'.

The taxpayer provided sales representation to nine manufacturers and suppliers, mainly UK catering wholesalers, on a commission basis. He represented them in relation to about 120 customers.

An agreement was reached with one supplier to sell them the customer database relating to their business, the related goodwill, trademarks and business information, together with the benefit and burden of unperformed contracts and the records. After the sale, the taxpayer could no longer use the trademarks or have any contact at all with those customers. The taxpayer stated that, after the sale, his gross commissions reduced by 55% and his customer base reduced to only 35.

HMRC argued that, in order for the taxpayer to qualify for ER, it was not enough to make disposals of assets used in the business. There had to be a disposal of an identifiable part of the business which on its own was separately definable. HMRC did not consider that this disposal amounted to the disposal of a separately definable business. The business carried on after the disposal was the same as that carried on before, albeit on a smaller scale. In order to qualify for ER there has to be the sale of part of a business.

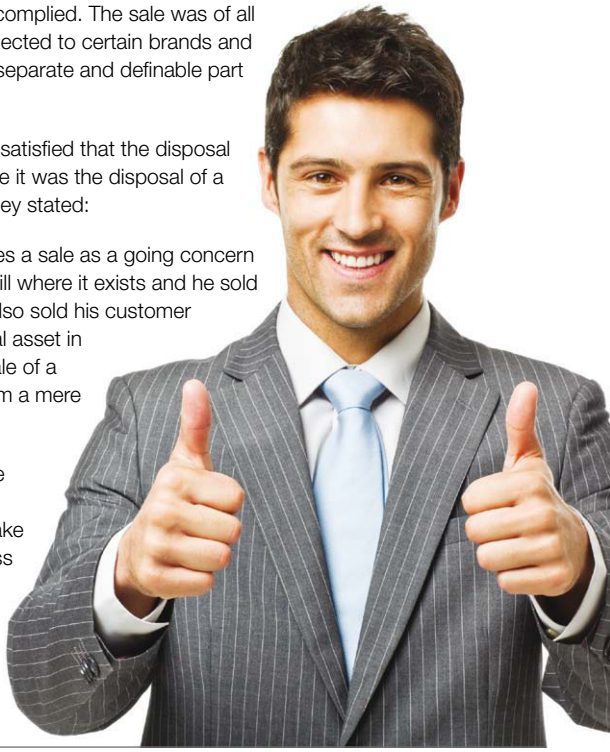
The taxpayer argued that there were effectively nine separate businesses and that the sale was of a definable separate part of those businesses. He no longer had the trademarks and could no longer approach customers.

A non-compete clause in the sale agreement ensured that the taxpayer complied. The sale was of all the business connected to certain brands and this was clearly a separate and definable part of the business.

The Tribunal were satisfied that the disposal did qualify because it was the disposal of a going concern. They stated:

'What characterises a sale as a going concern is a sale of goodwill where it exists and he sold the goodwill. He also sold his customer database, a crucial asset in distinguishing a sale of a going concern from a mere sale of assets.'

So success for the taxpayer but not without a fight! Make sure you don't miss out on 10%.



Toolkit terrors

HMRC have issued a reminder about the various 'toolkits' they have developed to assist those who prepare returns. The toolkits highlight common errors and the steps that can be taken to reduce those errors. They continue to emphasise that the main risk area in each toolkit is record keeping – or the lack of it!

However, the 'Expenses and Benefits from Employment Toolkit' can be particularly useful to owner managed companies and unincorporated businesses that employ staff. It identifies four main categories of risk:

- personal bills
- company cars and vans
- travel and subsistence and
- use or transfer of assets.

Personal bills

The point here is really very simple but not as easy as it sounds - have any personal costs of the directors/employees been identified and either repaid or included on a form P11D?

HMRC state:

'Benefits or assets provided and expenses paid to or on behalf of a director or employee may give rise to employment tax charges but the correct treatment can vary considerably.'

An understatement if ever there was one. Of course, you have to spot them in the first place to then treat them properly.

Company cars

Common errors include using the wrong list price, not including the cost of any qualifying accessories, using the wrong CO_2 emissions figure, and 'mechanical' calculation errors.

In addition, company cars include cars leased or acquired on hire purchase by an employer, not just bought outright.

And, of course, cars provided for non-employee family members are taxable on the employee!

Company vans

The standard van benefit charge is £3,000 but this can be reduced to nil only where both of the following requirements are satisfied:

- the van must only be available to the employee for business travel and commuting - it must not be used for any other private purpose (except to an insignificant extent)
- the van must be available to the employee mainly for the employee's business travel.

This begs several questions. Is private use other than ordinary commuting prohibited? Is mileage monitored to prove there is no private use? And, most importantly, how can any of this be proved?

Travel and subsistence

The rules for travel and subsistence are the most common 'benefit' that employers provide but also the most complex. HMRC explain them in a 100 page booklet, IR490.

Payments for travel and subsistence to a permanent workplace or round sum subsistence payments are all broadly taxable. Relief may be available by exemption or deduction for the cost of business travel where the expense is incurred in the actual performance of the duties of employment.

However, if round sum payments are made, the full amount should usually be added to the directors' or employees' earnings and PAYE and National Insurance Contributions deducted.

The most important easement in this area is a dispensation to effectively exempt approved travel costs. Have you got one and is it up to date?

Use or transfer of assets

Where an asset is provided for private use or given to an employee, a tax change will normally apply. There are exemptions for things like a mobile phone (although HMRC may challenge whether a smart phone falls within the phone exemption!) and for insignificant private use of assets, for example, a computer.

As you can see, the world of P11Ds is a minefield. Do your policies need a healthcheck? You can never have enough good policies. Please get in touch if this is an area you would like to discuss further.

Small pension pots

In the Coalition Agreement, the Government made a commitment to explore the potential to allow individuals to access part of their personal pension fund early as part of the wider objective to encourage people to save and invest more.

The Government has now announced that early access to pension savings should not be considered at the present time. However, there is support for extending the existing commutation rules applying to very small pension funds in occupational schemes to small personal pension funds.

Current position

A registered pension scheme is only allowed to pay out benefits to or in respect of a member in two forms, either as a pension or as a lump sum. There are a number of conditions and restrictions that these payments must follow in order to be authorised payments. Unauthorised payments are subject to more penal tax charges depending on the circumstances and the recipient could face a 55% tax charge on the payment.

An individual aged 60 or over can take all of their pension savings as a lump sum if their total pension savings are less than a trivial amount. This amount is less than £18,000 and such payments are known as trivial commutation lump sums.

For those in an occupational pension scheme (OPS) (including a public service scheme), funds of £2,000 or less (known as small pots) can also be paid out to an individual aged 60 or over, irrespective of the value of any benefits already taken from that scheme or funds held in any other registered scheme.

Proposed changes

From 6 April 2012 funds of £2,000 or less held in personal pension arrangements can also be paid out as lump sum payments to individuals aged 60 or over provided certain conditions are met. These payments can be made regardless of the value of the individual's total pension savings and can be made in addition to any trivial commutation lump sum or OPS small pot payments the individual may have received. However, an individual can only have two such 'personal pension small pot' payments in their lifetime.

This will help individuals aged 60 or over who have total pension savings over £18,000 and who have not therefore been able to use the trivial commutation rules to access any small pension pots. It will also benefit those who have already taken a trivial commutation lump sum and later discover small benefit rights in a personal pension scheme.

Tax credits - will the changes affect you?

The impact of a number of changes to tax credit entitlement have already been felt during 2011/12 but with the new tax year on the horizon, this article covers further changes ahead which may be more significant.

A summary of the key changes are as follows:

- the period for which a tax credit claim and certain changes of circumstances can be backdated will be reduced from three months to one month
- a disregard of £2,500 will be introduced in the tax credits system for in-year falls in income
- the separate threshold for tapering the family element will disappear altogether (see below)
- there is to be an increase in the weekly working hours requirement for couples with children for Working Tax Credit (WTC) from 16 to 24, with one partner working at least 16 hours, and
- the 50 plus element will be removed from WTC.

In addition most rates are frozen for 2012/13 with the exception of certain disability elements of WTC and the child element of Child Tax Credit.

The family element

One of the changes which will continue to have a widespread impact in 2012/13 concerns the change to the family element. Many families have received the benefit of this element in recent years, as it was only reduced if a separate threshold was breached. This threshold had been set at £50,000 up to 2010/11 and in fact the basic family element of £545 was receivable until income reached £58,175.

In 2011/12 this limit reduced to £40,000 meaning it is not now available where income exceeds £41,329. The removal altogether of this separate £40,000, threshold for 2012/13 is likely to mean that many more families will no longer qualify for this element.

Example

A family with a two partner household and two qualifying children where one partner only works and that is full time could be entitled to tax credits of say £9,770 plus the family element of £545 in 2011/12 before taking income into account. If they have joint household income for tax credit purposes of £39,000 in 2011/12, they would not receive any part of the £9,770 as the level of income reduces the actual award entitlement to nil.

However, as their income does not exceed £40,000 they will still be entitled to the family element of £545 providing a claim has been made. In 2012/13, assuming the same level of income, this family element will also not be available as there will be no separate calculation for this element.

Be prepared

It will be critical for claimants to be aware of the more significant of these changes to avoid loss of entitlement or be faced with demands for repayments which can be stressful. If you require more information about how these changes may affect you for the new tax year 2012/13 please do contact us for further assistance.

Capital allowance catastrophe in April 2012

From 1 April 2011, the Government reduced the rates of corporation tax for all companies. However, in order to 'pay' for this reduction, the Government has proposed alterations to the capital allowances system for all businesses, not just companies, to take effect from April 2012.

Changes to the Annual Investment Allowance (AIA)

The first measure will reduce the maximum AIA from its current level of £100,000 to £25,000 for expenditure incurred on or after 6 April 2012 (1 April 2012 for companies).

As the accounting periods of many businesses will span these start dates, a pro rata calculation of their maximum entitlement will be required. Where a business has an accounting period that spans 1 or 6 April 2012, the maximum allowance for that accounting period is the sum of:

- the maximum AIA entitlement based on the previous £100,000 annual cap for the portion of the accounting period falling before 1 or 6 April 2012 and
- the maximum AIA entitlement based on the new £25,000 cap for the portion of the accounting period falling on or after 1 or 6 April 2012.

However, a restriction is set so that, for expenditure incurred in the part of the accounting period falling on or after 1 or 6 April 2012, the maximum entitlement is given only by reference to the second bullet point above.

This does not affect the overall maximum AIA for the accounting period as a whole but does affect the amount of expenditure after the relevant start date that may be covered by the AIA.

Example

A company makes up its accounts to 30 June annually. For the three months to 30 June 2012, the limit on expenditure qualifying for the AIA is £6,250. For the year to 30 June 2012, the limit is calculated as follows:

July 2011 - March 2012
9/12 x £100,000 = £75,000

April 2012 - June 2012
3/12 x £25,000 = £6,250

Total £81,250

If, in the nine months to 31 March 2012, the company had already spent £40,000 on purchases of machinery, that £40,000 would all qualify for AIA. If, in the three months to 30 June 2012 there were further purchases, £6,250 only would qualify for AIA due to the restriction, even though the overall maximum indicates there is still £41,250 to spend!

However, what is worse is that if the company delays spending the £40,000 until on or after 1 April 2012 in the three months to 30 June 2012, only £6,250 would qualify for AIA.

Timing

The timing of expenditure may therefore be critical. Consideration should be given to ensuring that expenditure is incurred before 1 or 6 April 2012 as appropriate, as this is the date which usually triggers the entitlement to capital allowances.

Traps for the unwary

Two points are worth noting in relation to this trigger point for capital allowances.

Firstly, the normal rule is that capital allowance entitlement occurs when expenditure is incurred and that is the date on which the obligation to pay becomes unconditional. HMRC interpret this as normally being the delivery date.

However, if there is a gap of more than four months between the date on which the obligation to pay becomes unconditional (ie delivery) and the date on which payment is required to be made, the expenditure is not incurred until the later date on which payment is required to be made. This could, for example, affect interest free credit arrangements.

Secondly, a special rule applies to hire purchase agreements. Usually all of the capital expenditure incurred under a hire purchase contract is treated as incurred up front. However, if the asset is not in use at the year end, any capital expenditure not incurred at the year end is deferred until the asset is brought into use, another timing issue.

Upsides

However, where expenditure is deferred in this way, it can mean that two 'bites' at the AIA are due, as AIA applies per accounting period. This can require a bit of forward planning to maximise entitlement.

Changes to writing down allowances (WDAs)

For accounting periods commencing on or after, or beginning before and ending on or after, 6 April 2012 (1 April 2012 for companies), the second measure reduces the rates of WDAs per annum on expenditure not relieved by other allowances as follows:

- from 20% to 18% on expenditure allocated to the main pool and
- from 10% to 8% on expenditure allocated to the special rate pool.

Transitional rules apply for accounting periods which span 6 April 2012 (1 April 2012 for companies). WDAs will be calculated by using a hybrid rate where the accounting period does not coincide with the start dates. So if, for example, a company has an accounting period of 12 months to 31 December 2012, the main pool annual rate calculated on a monthly basis is:

3/12 x 20%	= 5% +
9/12 x 18%	= 13.5%
Rate	= 18.5%

In reality such rates have to be calculated on the more precise daily basis. This change affects all the main rates which apply to plant and machinery, including cars.

What to do

As you can see, the changes are not positive for businesses but, with a bit of careful planning, capital allowances can be maximised. If you would like to discuss these changes in more detail, please feel free to get in touch.