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Share Ownership

Owner-Employee Contract
Chancellor George Osborne recently announced a radical new style of employment contract which is planned to be legislated for and in force by April 2013.

If taken up, the new employees will forfeit their rights to redundancy, unfair dismissal, time off for training, the right to flexible working patterns and return from maternity leave will need to be notified 16 weeks in advance and not 8 as is usual practice.

In exchange for this loss of rights, they will be issued with shares in the company worth between £2,000 and £50,000. Should the employee leave or be dismissed, the company will be able to buy back the shares and Capital Gains Tax will not be payable on any profit.

The Owner-Employee contract will be optional for existing employees but a company can choose to offer the contract only to new employees if it wishes and the owner-employee will still be able to participate in an Enterprise Management Incentive (EMI) share scheme if that is available.

The positive benefits to small and medium sized enterprises will be that the employees' rewards will be more closely linked to the performance of the company. However, before offering this type of contract, the employer should consider the potential impact that a shareholder, who is also a disgruntled ex-employee, might have which would not be helpful to the fortunes of an aspiring company.

First Aid Trainers:

2 years to apply for their Class 1 NIC contributions to be refunded.
HM Revenue and Customs (HMRC) have conceded that there may have been some misunderstanding of their published guidance on Social Security (Categorisation of Earners) Regulation 1978. This act made provision for lecturers, teachers and instructors in traditional educational establishments, who were engaged under a contract for services (self-employed), to be treated as employed for National Insurance purposes and have class 1 National Insurance (NIC) deducted.

HMRC now think the guidance may have misled some training providers into deducting class 1 in error and claims for refunds are invited by HMRC for those specifically engaged in providing vocational or recreational training.

If you were engaged under a self employed contract in an educational establishment, or you are a training provider who engaged trainers under self-employment contracts, and accounted for class 1 NICs under the Social Security (Categorisation of Earners) Regulations 1978 and would like us to review the class 1 NIC deducted against the class 4, which is the correct category of deduction, please contact our office to enable us to make the necessary enquiries on your behalf.

It is also always good practice to regularly check your NI contributions history with the Contributions Agency to ensure that you will have sufficient contribution years to qualify for a full state pension.

Amnesty Update:

Ding Dong, Taxman Calling
Companies use different terms for the people who sell their products and you may be an 'agent', a 'consultant', a 'representative' or a 'distributor' for the company which you represent. But if you sell products to customers door to door or in their homes then you may be caught by the Direct Selling campaign.

Selling can involve demonstrating a product in a customer's home, sometimes at a party, door to door, using catalogues or you might just sell to friends or relatives. As a direct seller, you will usually take commission on the sales you make. You may be involved in direct selling as a full time business, to top up your income from another job, or to fit in with your caring commitments and responsibilities, but the commission that you take is a taxable source of income and as such it will need to be declared to HM Revenue and Customs (HMRC).

As a direct seller you are generally considered to be self-employed. This means that you are responsible for telling HMRC about what you earn and calculating and paying your own tax.

Not everyone in the direct selling industry is self-employed. If you are a direct seller and you are unsure, you could start by checking any contracts, agreements or information sent to you by the company whose products you sell.

You can usually work out if you are self-employed by asking yourself a few simple questions. If you are a direct seller and you can answer 'yes' to all of the following questions, you are probably self-employed:

- Do you have responsibility for your business?
- Can you decide how and when you do your work?
- Are you paid on a commission only basis?
- Do you risk your own money in setting up and running your business?
- Do you receive no holiday or sick pay from the company you represent?
- Can you hire other people to help you or do the work for you?

When you are self-employed you are responsible for telling HMRC about your income and paying tax and National Insurance yourself.

You can be employed and self-employed at the same time, for example working for an employer during the day and working for yourself in the evenings or at weekends.

If you, a member of your family or someone you know may be involved with direct selling, please speak to a member of the team who will review the circumstances and advise on the next step.

Ooo la la!

French Property as a Second Home
Plans to help the French budget deficit by increasing the tax paid by non-residents with a second home in France came into force at the end of August 2012 and will affect the 200,000 plus Britons owning properties in France. President Hollande is also looking to make more changes in the Finance Bill for 2013 which was published last month.

Withholding tax on rental income in France is set at 20% and although the Plus Value Taxe, which is the French equivalent of Capital Gains Tax, remains at 19% for non-residents, the social charge of 15.5% is being extended to both rental income and Capital Gains Tax making the tax rates for EU resident owners 35.5% on rental income and 34.5% for Capital Gains.

Previously, only French residents paid the social charge, however this is seen as a widening of the net to non-residents. Although the social charge does provide for benefits, it is defined under the current UK/France double taxation treaty as a "tax" and not as a social security contribution and so would be available for offset against UK tax liabilities.

New residents to France should ensure they are fully conversant with French tax law, and remember, it is not possible and not advisable to try to hide under the radar as a UK resident. The potential sale of any French property will be stalled by the notaire if no French tax reference number can be supplied.

If you own property in France contact a member of the team for further advice.

Stop Press

The national assembly have announced plans to extend the French TV licence to second homes at a cost of 41 per annum. The TV licence is normally part of the local tax charge and those with a second home may not realise this is necessary. Make certain you are not caught out.

Open the box and take the money!

Perhaps you remember the 1960's game show "Take your pick" where host Michael Miles offered the contestants the option to open the box or take the money? Well, the 2013 equivalent will be the Patent Box, where potentially a substantial amount of profits from patented items can benefit from a 10% Corporation Tax rate. An exciting option available to companies who have intellectual property (IP) on their books.

The creation of high-tech and scientific IP often involves intensive research activity, with businesses incurring substantial up-front costs with an uncertain future reward.

Turning an initial patent or concept into a marketable product requires a range of complementary activities, including further research and development (R&D) either on the IP itself or the processes required to manufacture or deliver the product or service.

Successful exploitation in the global market requires significant further high value activity. Until April 2013, when the Patent Box legislation starts to apply, there are no specific incentives for companies to retain IP in the UK during commercialisation. In contrast, several other jurisdictions provide incentives for companies to own and exploit IP, particularly patents, in addition to R&D incentives.

As a result, the UK tax regime may have been seen as uncompetitive for companies to hold and exploit patents, with incentives for businesses to transfer patents offshore prior to the full realisation of their value, in order to benefit from more advantageous tax regimes elsewhere. Rather than tightening exit rules, which could inhibit commercial transactions and risk making UK businesses uncompetitive on the global stage, the Patent Box legislation is being brought in to encourage businesses to retain and exploit IP in the UK through the introduction of the Patent Box.

The Patent Box enables income from a wide variety of sources to be included as "Relevant IP income" to be taken into account for the purposes of the special Corporation Tax Rate. Items which can be included incorporate a patent and can be:-

- the proceeds or royalties from the sale or licensing of the patent or the patented invention,
- proceeds from the sale of goods e.g. spare parts which incorporate the patented item or which are designed to be incorporated into the patented item, or
- damages and settlement funds from patent infringement actions.

The reduced rate of Corporation Tax (CT) from April 2013 only applies to companies who hold the qualifying IP rights or hold the exclusive licence in respect of qualifying IP rights.

Tax relief will be phased in from 2013 where CT at the special 10% rate will be charged on 60% of the profits attributable to the patented or licenced item, increasing by 10% per tax year until April 2017 when the 10% rate will be charged on 100% of the profits attributed to these items.

We would like to talk to you about this new special rate if your company holds IP rights from actively developing a patent or a product incorporating a patent, or if you have not developed the technology but hold the exclusive licence. You may need to consider formalising currently informal arrangements over licences and start to put in place systems to collect information necessary to ensure the calculation can be made. In order to maximise the benefit, we will need to make an election even if there are only patents pending and not yet granted, and we can go back to claim Patent Box to the date on which the patent was filed or for 6 years from the date of the grant whichever is the later.

We will also be happy to discuss with you whether any not-so-exclusive arrangements or licences could be made exclusive to enable your company to benefit.

Tax Return deadline 30 December 2012 for those paid through PAYE?

That's not exactly true, but it could very possibly be beneficial to those with underpayment below £3,000.

If your self-assessment tax return is filed on line by midnight on 30th December 2012 and it shows tax underpaid of £3,000 or less, HM Revenue & Customs (HMRC) will, in most cases, collect the tax you owe through the PAYE system, using your 2013/14 PAYE code number to collect one twelfth of the underpayment from your salary each month.

The cash flow benefit of this is not only that the tax underpaid is not due in a lump sum at the end of January 2013, but also that the potential for payments on account is avoided.

Payments on account are not due if your total tax liability is less than £1,000 or if at least 80% of the total tax due for the year is covered by tax deducted at source. If these conditions are not met then on a liability of £3,000 as much as £1,500 could be payable at each of the instalment dates in January 2013 and July 2013.

If you have not yet given us the information we need to prepare your Tax Return, why not talk to a member of the team to arrange an appointment and see if you can benefit from this early filing date?

And don't forget, the penalty regime for late filing of your self-assessment tax return means an immediate penalty of £100 even if the return is only 1 day late, which applies even if you have no tax to pay or have paid the tax you owe, rising to a hefty £1,300 or more penalty on top of any interest and surcharges charged if the Tax Return is filed 6 months late.

Stop Press

Look out for the letters now being issued regarding the High Income Child Benefit Charge which comes into effect from January 2013. If you receive a letter and want the amounts being withdrawn to be checked, or you would like to consider ceasing to draw the child benefit then please speak to a member of the team. We are regularly reviewing the press and the Tax Faculty of the Chartered Accountants of England and Wales contention that the plan to recoup the benefit paid to families will expose the government to a legal challenge under EU law and will advise you of the position as the process develops.

Annual Festive Parties – Now Booking!

The general rule for social functions, provided by an employer for directors and employees, is that the individual is chargeable to income tax on their share of the expense incurred. However, there is an exemption which applies to an annual party. This could be, for example, a Christmas party or similar annual function or a summer barbecue and must be provided for employees and:

- available to employees generally or
- available to employees generally at one location, where the employer has more than one location.

If the employer provides only one annual function for employees no charge to tax arises if the cost of the event per head does not exceed £150.

Where an employer organises its workforce at one site into separate sections or departments, an annual party may be provided separately for the different sections (e.g. separate wards in an NHS hospital trust). As long as a party is available generally to all staff at the site, and the other conditions are satisfied, the exemption may apply.

Two or more functions
If the employer provides two or more annual parties or functions, no charge arises in respect of the party, or parties, for which costs per head do not exceed £150 in aggregate.

For each function the cost per head should be calculated. The cost per head of subsequent functions should be added. If the total cost per head goes over £150 then whichever functions best utilise the £150 are exempt, the others taxable.

It's time to check for losses on unquoted share values

The budget of March 2012 brought in plans to place a cap on certain tax reliefs available from April 2013. One of the proposed reliefs which are set to be capped is the availability for losses on unquoted trading company shares to be set against income tax.

This relief is valuable as it turns a Capital Gains Tax (CGT) loss into a relief against Income Tax. Under normal circumstances a loss on the disposal of shares would be a capital loss and only available to set against the current or future years' capital gains. However, it is possible to claim that when shares become of negligible value then the loss made can be claimed against other income, and can be claimed in such a way as to potentially generate a repayment of income tax provided tax has been paid.
For unquoted trading companies the fact that shares have become of negligible value has to be specifically agreed by HM Revenue & Customs (HMRC). It is always necessary to make a claim for this relief as if the shares subsequently cease to exist then the opportunity to make this claim is lost.

The benefit of making this claim can be substantial and the loss made on the shares is wholly allowable provided it meets certain criteria. However for shares being regarded as of negligible value from April 2013, the ability to utilise the loss will be capped at £50,000 or 25% of the individual's income.

The rules are much more restrictive for quoted trading companies, however it is time to check your shares in all qualifying trading companies. If you find that not only are your quoted shares not performing, but the company that you invested in now shows up on the HMRC Negligible Value list, talk to a member of the team to see if the criteria is met or if the directors of an unquoted trading company have established the shares are to be agreed as being of negligible value by HMRC then please advise us immediately so that we can correctly make a claim for this relief in good time and against the most appropriate tax year, so as to maximise the benefit to you.

Tax efficient charitable giving

It is reported that half of all charitable donations in the UK come from just 7% of donors and, if these figures are correct, that means that there are some very substantial donations made by just a handful of individuals.

It is unlikely that the vast majority of the population give to a charity because of the tax reliefs available, however, when new rules imposing a cap on relief which can be claimed to £50,000 or 25% of taxable income come into force in April 2013, it is expected to have a negative impact on the donations made by these large donors and it will be up to the general public to make up the difference.

So how do we claim tax relief for donations made?

A purchase at a charity shop or a few pounds thrown into a bucket will get no tax relief, but the more astute higher rate tax paying donor can maximise the impact on the charity they support whilst helping themselves to a little tax relief.

Tax relief is given at the taxpayer's highest rate if the money given to a charity is made under the Gift Aid scheme. The donation can be a single donation or a series of donations and includes covenanted payments.
The Gift Aid scheme is available to UK residents and to non UK residents providing they pay sufficient UK tax to cover the tax at basic rate on the donation. Claims for the tax relief, if the taxpayer pays higher rates of tax, are made on the Self Assessment (SA) Tax Return.

To enable the Charity to benefit fully from the donation, a Gift Aid certificate will need to be signed by the donor and this action enables the charity to claim the basic rate tax you have already paid on the donation. This means that for every £1 donation made, the charity can claim back the 25p basic rate tax paid, making the £1 donation worth £1.25 to the charity and actually costing the 40% tax paying donor 75p.

Example of a 40% taxpayer	
Cash gift made	1000
Basic rate tax treated as deducted (20/80)	250
Amount received by charity	1250
Tax relief for donor at 40%	500
Net cost to donor	750

Individuals can also give gifts of shares and securities which are listed on a recognised stock exchange including AIM shares, unit trusts and shares in open ended investment companies. Relief is also available for gifts of land and buildings. The income tax relief available is the market value of the gift plus any incidental costs of making the gift, but there are rules which prevent the gifting of items which were acquired within 4 years of making the gift and also when the main purpose of making the gift was to acquire tax relief. There are also restrictions when the gift is made in return for some form of benefit.

Gifts of assets to charities are exempt for Capital Gains tax purposes and so neither a chargeable gain nor an allowable loss arises.

Please speak to a member of the team if you are making or are considering making charitable gifts so that we can ensure that the correct information is entered on your Self-Assessment Tax Return.

We Can Help

We can help you by ensuring that you're aware of the changes that will affect you, your family and your business. To find out more about the ways that we can help you, do not hesitate to contact us.