Issue 1, August 2020

AUGUST 2020 NEWSLETTER

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HARDWICK & MORRIS IS A VIBRANT FIRM OF CHARTERED ACCOUNTANTS, CHARTERED TAX ADVISORS AND BUSINESS MANAGERS SPECIALISING IN MUSIC AND ENTERTAINMENT.

Introduction

Welcome to the first of a regular newsletter covering some of the recent changes in tax law and other matters that we believe may be of interest to clients, contacts and other advisers that we work with. The intention is not to provide a full technical update but to highlight some recent developments, provide some information on changes that may be of interest or relevance to you and to give an insight into some of the things we have been up to.

In this first edition we cover the latest on HMRC's plans for Making Tax Digital in relation to Income Tax as well as recent changes to Capital Gains Tax obligations when selling residential property.

There are updates on both the Government's Job Retention Scheme as well as the second and final extension to the Self-Employed Income Support Scheme.

We have included a summary of Kevin Offer's recent article for the Sports Law & Taxation journal comparing the decisions handed down by the courts in respect of the image rights of Xavi Alonso and Geovanni.

Finally, H&M's current hot topic looks at the tax consequences of building home studios and offices.

Internal News

Hardwick & Morris LLP is delighted to welcome Ben Allen ACA to the firm. Ben joins the firm as a Manager in the accountancy department. Ben has been a chartered accountant since November 2014 and joins Hardwick & Morris LLP with several years of experience.

Kevin Offer has been appointed to the committee of the International Tax Specialist Group (ITSG) of which Hardwick & Morris LLP is a member. A regular speaker at ITSG conferences, Kevin now takes on added responsibility in respect of the running of the group. A link to the ITSG's website can be found below:

http://www.itsgnetwork.com/itsg/index.asp

Last, but not least, some happy news in these difficult times. We welcome Theo into the world and congratulate Caroline Harding (H&M partner) and Spencer on their new arrival.

Contents

Making Tax Digital (MTD) Update - Income Tax

Whilst Pilot schemes are currently ongoing we now know that self-employed businesses & landlords with business & property income over £10k will need to be fully compliant for MTD from 6th April 2023. This will obligate a taxpayer to report quarterly income figures to HMRC who will then calculate the taxpayer's estimated income tax liabilities on a more frequent basis.

The business will have one month following each quarter to submit their returns. However, corrections can be made at any time.

If a business is using MTD for VAT already they can align with income tax. However, we can see some issues arising that a taxpayer may have to consider.

For example, does the VAT quarters and accounting period of the business currently align or does a change of VAT stagger need to be considered?

The MTD income tax deadline will be one month after the specified period. For VAT the business has one month and seven days to report after a VAT quarter ends. Can the business finalise their quarterly VAT returns in what is, effectively, a shortened time scale?

HMRC are presenting MTD as a tool to allow the taxpayer to plan their cash flow for tax liabilities. There is no doubt, however, that for some taxpayers MTD will create additional administrative burdens. It is important to note though that, if a taxpayer has to comply with MTD compliant for income tax, the self-assessment tax return filling deadline, balancing payment deadline and payment on account deadlines will remain the same.

If you have any concerns on the impact of MTD on your business then feel free to contact us.

Self-Employment Income Support Scheme (SEISS)

The UK Government have announced that the second SEISS grant will be open for applications from 17th August 2020.

The claim will be calculated the same way as the first grant and the eligibility criteria remain the same. The amount of the grant, however, is reduced to up to 70% of trading profits, restricted to a maximum of £2,190 a month and £6,750 in total.

Like the first grant, HMRC will be contacting those they believe may be eligible for the scheme. A claim may only to be made if a trade has been affected by Coronavirus on or after 14th July 2020. The guidance from HMRC on this is still not exactly clear but we know this does not have to mean a reduction of earnings in comparison to prior years.

HMRC does have some guidance of examples of being 'adversely affected' on their website and have prepared some 'adversely affected case studies'.

HMRC will again, also calculate how much they believe a taxpayer is due.

Finally, as with the first grant, agents will not be allowed to make a claim on their clients' behalf.

The scheme is due to close for applications claims on 19th October 2020. There are currently no plans for a further extension of the scheme.

If you have any questions on the scheme then we would be happy to discuss them with you.

Xavi Alonso & Geovanni: Image rights case comparison

Kevin Offer, H&M tax partner, has written his latest article for the Sports Law & Taxation journal where he compares the decisions handed down by the courts in respect of the image rights of Xavi Alonso and Geovanni.

Whilst the two cases were in separate jurisdictions (Alonso – Spain & Geovanni - UK), and gave contrasting results, the detail within each decision handed down by the courts should give sportsmen & advisors some comfort as to what is acceptable in respect of image rights arrangements.

In summary, the Geovanni case in the UK involved the assignment of image rights by the player to an offshore company and the payment by Hull City for the use of those image rights. The First Tier Tribunal held that the payments constituted remuneration from the employment of the player and should be taxed accordingly.

In reaching its decision, the Tribunal referred to several findings, which provide a useful indication of what clubs, players and their advisers should consider when reviewing image rights contracts

1. the club did not have any clearly defined intention or plan to commercially exploit Geovanni's overseas image rights;
2. there is no reliable evidence as to how the club arrived at the annual image rights payments;
3. the club did not obtain any valuation or opinion as to the value of Geovanni's overseas image rights;
4. the club offered to increase the sum payable for Geovanni's overseas image rights without any contractual obligation to do so;
5. the club did not have the resources to exploit Geovanni's overseas image rights even if there was a market to do so;
6. the club did not have any real interest in commercially exploiting Geovanni's overseas image rights;
7. there was little if any prospect of the club exploiting those rights;
8. Geovanni's overseas image rights were never commercially exploited, before, during or after his period at the club;
9. the club did not satisfy the Judge that Geovanni's overseas image rights had any commercial value;
10. no-one at the club could reasonably have believed that the rights had any commercial value to the club; and
11. no-one at the club ever addressed their minds to whether it was realistic to consider that the club could commercially exploit Geovanni's overseas image rights.

In comparison, the Alonso case involved the assignment of image rights by the player to a company in Madeira in 2009 while he was a player at Liverpool and just before his subsequent transfer to Real Madrid. The Madeiran company then assigned Real Madrid 50% of the image rights in return for a fee on Alonso signing for the club. Like the UK, the Spanish tax authorities took the view that the arrangements were a "sham", with the purpose simply to avoid Spanish taxation. These arrangements should, therefore, be ignored.

The Spanish courts, however, ruled in Alonso's favour judging that a genuine assignment had taken place. Therefore no tax avoidance had taken place because the amount paid by Real Madrid for the exploitation of Alonso's image rights had not exceeded 15% of the amount paid to Alonso by the club for his professional services, as per Spanish law.

In determining that a genuine assignment had taken place, the judgement confirmed the following:

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- It is common practice for intermediary companies to be utilised in obtaining sponsorship contracts.
- The continuation of the contract with a well-known sports brand through the Madeiran company was cited as acceptance of the assignment.
- Alonso had not participated in negotiations or searched for opportunities to exploit the image rights beyond giving consent in some cases.
- There was no doubt that the Madeiran company had issued all invoices and collected all payments relating to the image rights agreement entered in its name. It had also benefitted from increased income because of the assignment of the image rights which enabled the company to develop its activity of making investments.
- The value of c 5 million placed on the assignment was based on a valuation report which considered all facts available at the time of the assignment.

Looking at the two decisions it appears, at first glance, that the UK decision in the case of Geovanni considered the substance of the image rights arrangements over the legal form. The Spanish court, however, appears to have decided the case on the legal form rather than substance. This, however, is a simplistic view and the cases are more closely aligned than may appear.

From both judgements we can see that it was decided that a transfer of image rights had taken place and neither arrangement was considered a sham. It is, however, our opinion that the Geovanni case failed due to the lack of commercial substance whereas the Alonso case was won for similar reasons.

If you would like a copy of the article in full, please contact us at tax@41gp.com.

CGT on Property Disposals

Since 6th April 2020 UK resident taxpayers have been required to report and pay capital gains tax (CGT) on disposals of UK residential property within 30 days of completion. This brings the treatment into line with that for non-resident taxpayers disposing of UK property.

The obligation arises on UK residents to report gains on UK residential property only where tax is due. This will exclude disposals that qualify for PPR.

There are a number of steps to report a gain that involve input from the client and the process may therefore take some time to complete.

The client must have a government gateway account and set up an online CGT account. This is a standalone account which is separate from their self-assessment account.

Once the CGT account is set up the client provides the details to the agent and there is a separate step to authorise the agent. Existing self-assessment agent authority is not recognised for the service.

Paper returns

Paper returns are available but have to be requested from HMRC and are sometimes prepopulated with the taxpayer's details.

They are intended for use by digitally excluded taxpayers who are unable to use the digital service.

Currently, paper returns are also neccesary for disposals made by a deceased's estate during the period of administration, which cannot be reported online.

Non-residents recap

The reporting requirements for non-residents are wider and include:

- residential UK property or land (land for these purposes also includes any buildings on the land);
- non-residential UK property or land;
- mixed use UK property or land; and
- rights to assets that derive at least 75% of their value from UK land (indirect disposals).

Non-residents must report disposals even where no tax is due and can use the new digital service for all types of disposal. The previous form that was in use for non-residents to report gains should only be used for disposals made on or before 5 April 2020.

Self-assessment returns

Gains reported through the new service must also be reported on the taxpayer's self assessment tax return. However, a taxpayer that is not otherwise required to file a return will not have to do so if all gains have been reported through the new service.

Job Retention Bonus

HMRC have published updated guidance on the Job Retention Scheme and the Job Retention Bonus that is available next year.

Employers will be able to claim a one-off payment of £1,000 for every employee they have previously received a grant for under the Coronavirus Job Retention Scheme (CJRS) and who remains continuously employed through to the end of January 2021.

To be eligible, the employee must have received earnings in November, December and January, and must have been paid an average of at least £520 per month, and a total of at least £1,560 across the three months.

As the employer, you or your clients will be able to claim the bonus after you have filed PAYE information for January 2021. The bonus will be paid from February 2021. More detailed guidance, including how employers can claim the bonus online will be available by the end of September.

What you or your clients need to do now

If advisers or their clients intend to claim the Job Retention Bonus, they must:

- ensure all employee records are up to date;
- accurately report employees' details and wages on the Full Payment Submission (FPS) through the Real Time Information (RTI) reporting system; and
- make sure all of your CJRS claims have been accurately submitted and you have told us about any changes needed (for example if you've received too much or too little).

Reminder of changes to CJRS

From **1 August 2020** CJRS continues to provide grants for furloughed employees but no longer funds employer's National Insurance (NI) and pensions contributions. Employers now have to make these payments from their own resources for all employees, whether furloughed or not. HMRC guidance has been updated to reflect these changes.

Further guidance and live webinars offering more support on changes to the scheme and how they impact employers are available online – go to GOV.UK and search 'help and support if your business is affected by coronavirus'.

Making sure your data is right

It is important that advisers and their clients provide the data needed to process claims. Payment of grants may be at risk or delayed if a claim is submitted that is incomplete or incorrect. HMRC may be in touch to request employee data if it is missing from previous claims.

National Insurance numbers

Employers need to provide a National Insurance number (NINO) for all employees as part of their CJRS claim. The only exception is in the very limited circumstances where an employee genuinely does not have a NINO, for example, if they are under 16 years old.

If a claim is made for an employee whose NINO is not known employers can check by searching GOV.UK for 'Check a National Insurance Number using basic PAYE Tool'.

HMRC will no longer accept claims for fewer than 100 employees by phone where employers do not have all employee NINO's unless the employees they are claiming for genuinely do not have these.

Claimed too much in error?

If advisers or clients have claimed too much for a CJRS grant and have not repaid it they must notify HMRC and repay the money by the latest of whichever date applies below:

- 90 days after receiving the CJRS money the employer is not entitled to;
- 90 days from when circumstances changed so that the employer was no longer entitled to keep the CJRS grant; or
- 20th October 2020 if the employer received CJRS money they are not entitled to, or if your circumstances changed on or before 22nd July.

If this is not done the adviser and/or client may have to pay a penalty. HMRC will not seek to impose penalties for innocent errors and small mistakes. They will, however, take action against anyone who deliberately sets out to defraud the system or claims money they aren't entitled to.

How to let HMRC know about claiming too much

If an amount has been received that is more than the employer is entitled to the overpayment can be included on the next online claim.

If you need assistance with the CJRS or job retention bonus then get in touch.

H&M's hot topic

What are clients currently asking about?

We have recently had several enquiries from clients expressing an interest in building home studios and/or offices. Should these be paid for by their Limited Companies and what are the associated tax implications?

These enquiries have varied from converting a room or an area inside an existing home, constructing a separate building adjoining onto the family home or building a completely separate structure in the grounds of the property.

Not surprising, with Covid-19 and its consequences. What needs to be considered?

It is important to recognise that there is no standard way to deal with this. Each scenario needs to be considered on a case by case basis based on the facts and plans of the property owner.

Who should own the studio / office?

The Limited Company?

Positives:

Exploratory costs will be allowable as a deduction for tax. These include architect fees, surveys, etc

There is potential for input VAT recovery if the business is VAT registered on build costs and exploratory costs.

Negatives:

Corporation tax relief will generally not be available on the cost of building the structure.

If the house is sold then it is likely that a separate sale will be required for the studio/office with a portion of the sale value being assigned accordingly. If there is a profit on disposal then the gain will be chargeable to corporation tax. A sale of the asset by the company may also need to have VAT added to it.

The same issues would apply for a deemed disposal at market value This would arise on situations such as ceasing the company and transferring ownership to the individual.

If there is private use of the studio/office then VAT recovery will be restricted and a benefit in kind will arise. A benefit in kind may also arise if the studio/office build gives rise to an increase in value of the rest of the property.

The Individual?

Positives:

No effect on Principle Private Residence (PPR) if there is personal use of the studio/office. No benefit in kind issues either.

No corporation tax considerations.

Individual could charge company rent as method of profit extraction if they wish.

Company can still get relief for day to day costs of running the office and corporation tax relief for fixtures and fittings (see below).

Negatives:

No VAT recovery possible on build costs.

Can affect PPR on a future sale, if no personal usage of the studio.

What about Equipment, Fixtures & Fittings etc?

Irrespective of who owns the overall structure it is likely to be beneficial for any equipment & fixtures and fittings for the home studio/office to be purchased by the business. Capital allowances can be claimed and input VAT is recoverable if the business is VAT registered.

Any personal use of the equipment, fixtures and fittings which is not incidental, however, may again give to give rise to a benefit in kind.

You have mentioned about implications of selling my home in the future?

If a property is an individual's main home, then any gain on disposal is currently exempted by PPR. If the Limited Company owns the studio/office, then PPR will be affected as detailed earlier. If the individual owns the studio/office then PPR will be affected to the extent that part of a house is used wholly and exclusively for business purposes. In this case it is important that the studio can be, and is, used personally.

Anything else?

Clear breakdowns of supplier invoices, and ensuring invoices are addressed to the correct parties, is recommended.

We also recommend clients speak with their adviser to discuss their plans before work is undertaken. We can then plan the best way to structure the ownership of the studio/office and work out any potential pitfalls in advance.

Should you wish to discuss any of these matters in further detail or have any other questions on tax, get in touch with your usual H&M contact or email us at tax@41gp.com