journal

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Owner/managed companies hit for six

The new basis of taxing dividends, which will come in from 6 April 2016, is particularly targeted at company owner/managers who draw profits as dividends rather than as salary in order to avoid paying NICs.

The existing 10% tax credit is to be replaced by a tax-free dividend allowance of £5,000 for basic, higher and additional rate taxpayers. Once the allowance is exceeded, dividends will be taxed at:

- 7.5% within the basic rate band.
- 32.5% within the higher rate band.
- 38.1% within the additional rate band.

The overall effect of these changes will be to increase the rate of tax on dividends above the tax-free allowance by 7.5% compared with current rates.

The allowance is not quite as generous as it could be, because it counts towards the basic and higher rate bands – effectively acting as a nil-rate band. So it's not really a tax allowance in the ususal meaning of the phrase. Owner/managers typically draw a small amount of director's remuneration to preserve their entitlement to the state pension and take the remainder of their drawings as dividends.

Most will see a substantial increase to their tax bills from 2016/17 onwards compared with this year. For example, take a company with profits of £50,000 of which the owner/manager draws £8,000 as remuneration and a further £33,500 as dividends. Using estimated 2016/17 rates, the overall tax and NICs will go up from £8,900 in the current year to £10,312, an increase of £1,412.

The extra tax cost gets even worse as the level of dividends increases. So with profits at £100,000, salary of £8,000 and dividends of £73,500, the tax will go up from £28,900 to £32,937 – an increase of £4,037 for 2016/17 comared to 2015/16. The problem is doubled where spouses or civil partners run a company together.

Despite the changes, the dividend route will continue to be far more tax efficient than taking director's remuneration.

Time to incorporate?

The big question is, however, whether incorporation will still be worthwhile. Using estimated 2016/17 NIC rates, the total tax and NICs will be £12,632 for a self-employed person with profits of £50,000. The total will be £33,632 where profits are £100,000. The incorporated figures look slightly better because a small amount of profit is retained in the company. So incorporation can still have a tax advantage, and the saving would be greater if some profits were retained. Another benefit of incorporation is that even if profits fluctuate, the level of drawings can be kept constant – maybe within the basic rate band.

Mitigating the impact

Apart from retaining profits, there is no easy way of avoiding the new tax rates. However, it might be possible to mitigate their impact:

- An owner/manager could charge a commercial rent for company use of an office space in their home – rent is not subject to NICs.

- Interest could be charged on a director's loan account with the company, especially if the owner/manager can make use of the £1,000 tax-free savings allowance.

- It might be possible to run a small section of a business on a self-employed basis alongside a company. Class 4 NICs are avoided if profits are kept below the lower limit, and although class 2 NICs will probably be payable, these may be abolished.

- Another possibility could be using the dividend allowance of a partner or adult children by bringing them in as shareholders.

So incorporated businesses should probably remain as they are, at least for now, but the decision is no longer so clear cut for unincorporated businesses that might be thinking of incorporating – especially when the simplicity and cost savings of being unincorporated are taken into account. And of course the dividend tax rates could be increased in the future.

You might want to think about taking dividends before 6 April 2016. Apart from pre-empting the tax increase, doing this may increase your loan account with the company so that it can pay you more interest in the future.

This is a new and complex area, so if you need any advice then please get in touch. We are here to help.

A different type of campaign on NMW

HM Revenue & Customs' (HMRC's) latest campaign has a different focus to its predecessors. It is aimed at employers who have not complied with national minimum wage (NMW) requirements rather than at tax avoiders.

Since May, the penalties for non-compliance have increased substantially and are now charged according to the number of people employed. For each employee, the penalty is 100% of the underpayment up to a maximum of £20,000. Arrears are calculated according to a formula that uses the current rate of NMW. In addition, employers could find themselves publicly 'named and shamed', which would not be good for business if it were picked up by the local press. Employers can avoid penalties and adverse publicity by making use of the NMW campaign, although of course it will still be necessary to pay any arrears. There are several areas where it is easy for employers to make mistakes:

Apprentices should be paid the apprentice rate even if they are young and inexperienced. There is no reduction for any in-house training. If an apprentice is 19 or over, the apprentice rate only applies for the first year. Where an apprentice initially starts work on a normal contract of employment before starting an apprenticeship, the appropriate age-related rate should be paid for that period.

Deductions for items required for work, such as uniforms, are taken into account when calculating the NMW. However, voluntary deductions, such as for meals, can be ignored.

Tips cannot be included in the new NMW calculation even though they are taxable.

Training required by the employer counts as working time for NMW purposes. The time spent travelling to attend training also counts if it is between the workplace and the training. It does not matter if the training is outside normal working hours.

The campaign does not have a fixed deadline, but given the generous terms offered it would be wise to make use of it as soon as possible. HMRC can be expected to ramp up their NMW enforcement once the campaign ends, typically targeting low paying sectors such as hair and beauty salons. Even if you are currently paying the correct rates of NMW, you need to look back for six years to be safe. Please get in touch if you need help with the process.

Capital v revenue expenditure

Knowing whether business expenditure is revenue or capital is essential to the preparation of correct accounts and tax returns, but it is sometimes difficult to decide what is the right treatment. HM Revenue and Customs (HMRC) has recently updated its guidance on the most common errors.

First the basics: revenue expenditure is deductible in computing taxable profits; capital expenditure is not deductible, but it may qualify for capital allowances. Currently up to £500,000 a year of capital expenditure on plant and machinery (not cars) qualifies for the annual investment allowance and is deductible in full. This allowance will fall to £200,000 a year from 1 January 2016. Capital expenditure that is over the limit, and also the cost of buying most cars, qualify for writing down allowances at 18% or 8%.

Establishing the precise nature of expenditure is therefore essential. The key is to keep full and accurate records of each item of expenditure, what it is for and the circumstances in which it was incurred, especially where it is part of a bigger project. This will allow identification of all revenue costs that arise in conjunction with capital expenditure so that they can be deducted correctly. Conversely – and this is what concerns HMRC – we will be able to ensure your tax return does not claim any impermissible costs.

Refurbishment of property is one area that HMRC looks at carefully. The general rule is that the cost of repairs is revenue expenditure, but improvement and alteration are treated as capital costs. Work on a building may include both types of expenditure so your records need to be detailed enough to make an apportionment, and to determine the nature of capital expenditure so that the correct rate of writing down allowance can be claimed.

HMRC says that where the records do not show a revenue-capital apportionment, the whole amount will be treated as capital. For example, if an invoice for legal costs includes capital elements, such as a new planning permission application, it will be treated as wholly capital even if it includes revenue items. To avoid this, you should make sure ‘mixed’ invoices are itemised.

Other areas of difficulty include legal and professional fees, costs connected with the structure of a business, training courses for proprietors, and IT and website costs.

We can help you categorise your expenditure correctly – so please contact us.

No more wear and tear

Landlords of residential property may justifiably be feeling somewhat hard done by right now.

If the restriction to tax relief for interest and other finance costs coming in from April 2017 was not enough, the government is also going to reform how individual and corporate landlords account for the costs incurred in improving and maintaining their properties. The change is set to start from 6 April 2016 (1 April 2016 for companies), although it is currently subject to consultation. The proposal is to replace the wear and tear allowance for furnishings with a new replacement furniture relief.

The wear and tear allowance is 10% of the rent received. For the deduction to be available, a property must be furnished to a level that a tenant could move in and live without having to provide anything apart from their food and clothing. With replacement furniture relief, landlords will only be able to deduct the costs actually incurred on replacing furnishings – the initial cost of the furnishings does not qualify for relief.

However, it will not be necessary for a property to be fully furnished. Landlords will be able to claim a deduction for the cost of replacing furniture, furnishings, appliances and kitchenware provided for the tenant's use, such as:

- Movable furniture or furnishings, such as beds or suites
- Televisions
- Fridges and freezers
- Carpets and floor-coverings
- Curtains
- Linen
- Crockery or cutlery

There are a couple of restrictions to the amount that can be claimed. Firstly, relief is reduced by any proceeds from selling the old asset that is being replaced. Secondly, relief is not given for any cost that represents an improvement. For example, if a washing machine is replaced with a washer-dryer, only the cost of an equivalent washing machine will be allowed.

The relief does not cover the replacement of fixtures that are integral to a property. This is because these are already allowed under the existing property repair rules which cover such items as baths, washbasins, toilets, boilers and fitted kitchen units. Furnished holiday lettings are also unaffected because they receive relief through the capital allowances regime.

If you are renting out partly-furnished property, the new relief will definitely be beneficial for you. And if you are planning a refurbishment in the near future, it could pay you to wait until the expenditure qualifies for replacement furniture relief.

Property taxation reforms

The good news is that the rent a room tax relief limit will increase from £4,250 to £7,500 from 6 April 2016.

The relief applies where you rent out a room or rooms in your main residence. However, this is still not quite enough to cover the average monthly room rental in London of nearly £700, but only a small excess is left taxable.

The other news is not so good. From 6 April 2020, relief for interest and other finance costs will be restricted to the 20% basic rate. There will be a gradual introduction so the restriction will apply to a quarter of finance costs for 2017/18, half for 2018/19 and three-quarters for 2019/20. In most cases, landlords will have used the finance to buy the let property, but it could also have been used to fund major repairs or furnishings. The restriction will also apply to fees incurred when taking out or repaying mortgages or loans.

Example

A higher rate taxpayer has a buy-to-let property which cost £200,000, being financed by a £150,000 mortgage with a 3.5% interest rate.

	2015/16	**2020/21**
	£	**£**
Rental income	8,400	8,400
Mortgage interest	(5,250)	
Profit	3,150	8,400
Tax at 40%	1,260	3,360
Relief for interest at 20%		(1,050)
Tax cost	**1,260**	**2,310**

The tax cost in 2020/21 represents 73% of the true rental profit, and the worry for many is that an interest rate rise will leave them paying more tax than there is profit available to pay it. Even someone who is currently a basic rate taxpayer could be affected if the extra profit pushes them into the 40% bracket.

Apart from trying to raise rents to cover the tax cost, other solutions are somewhat more drastic. Anyone who owns property outright without finance is not affected by the changes, so if you have a portfolio of properties you might be able to sell some in order to reduce or completely repay mortgages. A company structure will avoid the finance costs restriction, but generally comes with other tax complications – although it may suit a new entrant to the buy-to-let market. Many may just sell up.

You have until 6 April 2017 to plan, and as always we are here to help.

Using social media for business

What your staff say about your business on social media can affect its reputation.

What can you do if disaffected employees post derogatory comments on personal Facebook pages or Twitter accounts in their own time?

The Employment Appeal Tribunal (EAT) decided recently that an employee who posted negative and abusive comments on a social media site was fairly dismissed. But the case highlighted the challenges employers face where employees' postings – often made with little thought – may instantly receive wide public exposure.

In the recent case of British Waterways Board v Smith, the employee, Mr Smith, had made offensive comments about colleagues on his personal Facebook page. He also indicated that he had drunk alcohol during a week he was on standby, which was not allowed, although he later denied he had actually done so. British Waterways Board (BW) had a social media policy that expressly forbade "any action on the internet which might embarrass or discredit BW". The disciplinary hearing found that the remarks could have undermined the confidence that other employees and the public had in BW, and that Mr Smith's breach of the social media policy amounted to gross misconduct, meriting dismissal.

Mr Smith claimed he had been unfairly dismissed.

The EAT clarified that Facebook postings by employees made on personal computers could result in disciplinary action if they mentioned their employer or their work.

This confirms that the normal legal principles of unfair dismissal apply to cases involving social media, and whether a particular dismissal is fair will depend on the facts.

Relevant considerations include the nature and seriousness of the alleged misuse. But the most important factor will be whether the employer had a social media policy that their staff were aware of. This should set out clear guidelines to employees on what they can and cannot say about the organisation and be cross-referenced to its bullying and harassment policy. It could include examples of unacceptable conduct and the penalties that might be imposed. Employers should review their policy frequently as social media evolve. Please contact us for further advice.

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