We are moving ever closer to the end of the 2015-16 tax year, and the budget later this month is likely to endorse a number of changes that have already been announced. This month's newsletter includes information regarding: the incorporation of property businesses, when should the self employed consider the incorporation of their business, company car drivers and private fuel, and extracts from a HMRC press release: was the Google settlement a "sweetheart deal"?

Incorporating a property business

Since the recent announcement of various changes to the taxation of unincorporated property businesses, there has been renewed interest in incorporation: would it be possible to shelter property income and capital gains inside the lower Corporation Tax regime?

Unfortunately, this apparent quick-fix for property business owners is fraught with dangers for the unwary. For example:

- **Stamp Duty Land Tax (SDLT):** a transfer of an investment property by an individual to a limited company is normally a chargeable transfer for SDLT purposes if the previous owner and the company are considered to be connected for tax purposes. SDLT would be payable based on the market value of the properties transferred. In certain circumstances, the transfer of property from a partnership to a limited company can be made free of SDLT considerations.
- **Capital Gains Tax (CGT):** since the Ramsay case, HMRC now accept that property investment can be considered a business, as long as the involvement of the owners represents more than just a "modest" quantity of activity. If, therefore, an existing unincorporated property business meets this more than modest criteria, the potential CGT liability when property is transferred into a limited company can be rolled over into the base cost of the shares issued on transfer. If not, landlords may face a significant CGT bill when they transfer property to a company.

There is also the end game to consider, what will happen when landlords want to retire and sell off their properties. If they have incorporated successfully, the cash that remains after property disposals and Corporation Tax has been paid, will presumably be required by the shareholders. If they subsequently withdraw this cash pool from the company, they will incur additional Income Tax, if not CGT charges. Taken together, these Corporation Tax and extraction tax costs could possibly exceed the tax costs of a similar, but unincorporated, property business.

The message is clear, tread carefully. Each unincorporated property business should consider the short and long term tax costs of incorporation before proceeding. Landlords should take professional advice before acting…

Incorporation v self-employment

Prior to 6 April 2016, self employed traders could make overall tax and NIC savings by incorporating their business if their annual income from self-employment exceeded approximately £10,000. The saving generally arose by taking a low salary and the balance as dividends thus avoiding NIC charges.

Unfortunately, changes to the tax system from 6 April 2016 may mean that this strategy is no longer beneficial (or less beneficial) in certain circumstances. The relevant changes are to the taxation of dividends.

The starting point, where it continues to be beneficial to incorporate is largely unchanged in 2016-17 although the amount of cash saved thereafter will be less than in 2015-16 and previous years.

An unintended result of the tax changes in 2016-17 is that it is still beneficial to incorporate and adopt the low salary high dividends strategy, until profits generated exceed £143,000, at which point you will pay more tax by incorporating your business. This is due to the higher rates of dividend tax that are applied to dividends received in excess of £5,000 a year.

Does this mean that previously incorporated businesses should consider returning to a self-employed structure if their business earnings exceed this £143,000 break point?

The answer may indeed be yes, but each person's circumstances need to be considered in some detail and professional advice should be taken before getting into disincorporation mode.

There is no doubt that the Treasury are intent on reducing the tax and NIC advantages of businesses incorporating and taking the low salary high dividend option. As the goal posts have moved, a new look at your business structure may be appropriate.

Company car drivers and private fuel

Since the tax on private fuel provided with company cars is so high, many employers now have an arrangement whereby they no longer pay for private fuel. In this case,

the employee must reimburse the employer for private fuel included in petrol bills paid by the employer. Otherwise, the employee may face a tax charge.

Consider the following example:

If your private mileage for April 2016 is 560 miles, and you drive a 1900cc diesel engine car, the rate per mile to cover fuel charges, as quoted in the latest rates published by HMRC, is 11p per mile. Accordingly, you should repay £61.60 to your employer. In order to exempt yourself from the car fuel benefit charge you must be able to demonstrate that the refund was actually made in the relevant tax year, in this example 2016-17.

Based on the above example, if the vehicle's list price when new was £25,000, and the car benefit charge rate was 26% (based on a 130g/km CO2 rating) the benefit in kind charge for the year would be £6,500. With no repayment of private fuel, there would also be a £5,772 car fuel charge. Both these amounts would be added to your taxable income for the year. If you were a higher rate tax payer the car fuel charge would cost you £2,308.80 a year in additional tax (£5,772 x 40%). This amounts to £192.40 per month.

If your actual private mileage proved, on average, to be 560 miles a month, you would therefore save £130.80 per month (£192.40 - £61.60).

It is worth crunching the numbers. Obviously, the lower your private mileage, the more likely a repayment system will save you money.

Multi-nationals and sweetheart deals

In an unprecedented move, HMRC have issued a press release regarding the accusation that Google were offered a deal that short changed UK taxpayers. Here's what they had to say regarding the "sweetheart deal" accusation and the settlement with Google:

'Sweetheart deal'

HMRC does not do "sweetheart deals".

The National Audit Office has full access to our papers and has in the past scrutinised the way that we resolve disputes in large and complex enquiries. In 2012, it appointed a retired High Court Judge to examine our largest settlements and concluded that HMRC had obtained good settlements for the country in all cases. The NAO also made recommendations, which we implemented. In large, complex cases, three HMRC Commissioners have to approve any proposal for resolving disputes, including one Commissioner from an area of the business which is not

directly responsible for the enquiry and the Tax Assurance Commissioner, who oversees the process and publishes an annual report on his work.

This process is subject to routine scrutiny by the NAO.

The Google enquiry

On 22 January 2016, Google announced that it had reached agreement with HMRC to pay an additional amount of £130 million in Corporation Tax and interest, as a result of HMRC's investigation which started in 2010. This sum is over and above the tax that they have paid for past years (or would pay for the current period were it not for HMRC's enquiry). The current tax charge that Google took in its accounts increased significantly from 2012, when the company first disclosed that it was under enquiry and made a provision for additional tax.

Some commentators have applied Google's group profit margin to its sales to UK customers and estimated that Google's UK Corporation Tax is equivalent to an effective tax rate of around 3% on the group's profit's arising in the UK.

This calculation does not reflect how tax law works.

In accordance with our published guidelines on resolving disputes, HMRC has taxed all of Google's profits chargeable to tax in the UK for the period in question, at the full statutory rate of tax.

There has been media speculation about what other European tax authorities are doing regarding Google. We can't comment on enquiries carried out in other countries, or on media speculation about them. So far, there has been no public confirmation that other countries have concluded enquiries with Google, either by agreement or by litigation. HMRC is satisfied that our enquiry has secured all the tax that is due in the UK."

Tax Diary March/April 2016

1 March 2016 - Due date for Corporation Tax due for the year ended 31 May 2015.

2 March 2016 – Self Assessment tax for 2014/15 paid after this date will incur a 5% surcharge.

16 March 2016 – Budget Day

19 March 2016 - PAYE and NIC deductions due for month ended 5 March 2016. (If you pay your tax electronically the due date is 22 March 2016)

19 March 2016 - Filing deadline for the CIS300 monthly return for the month ended 5 March 2016.

19 March 2016 - CIS tax deducted for the month ended 5 March 2016 is payable by today.

1 April 2016 - Due date for Corporation Tax due for the year ended 30 June 2015.

19 April 2016 - PAYE and NIC deductions due for month ended 5 April 2016. (If you pay your tax electronically the due date is 22 April 2016)

19 April 2016 - Filing deadline for the CIS300 monthly return for the month ended 5 April 2016.

19 April 2016 - CIS tax deducted for the month ended 5 April 2016 is payable by today.