Ellacotts Tax Newsletter – May 2019

This month we're delighted to announce two new appointments to our Private Client Tax team. Also this month:

- The latest IR35 cases against celebrities
- The increase in tax on termination payments
- How best to extract profit from your family business
- Tax planning to minimise the High Income Child Benefit Charge
- Airbnb landlords will continue to enjoy relief
- Possible changes to Capital Gains Tax Private Residence Relief

If you have any questions or would like to discuss an article in more detail, please contact us.

We've expanded our Private Client Tax team

We are delighted to announce two new senior appointments to our Tax and Wealth Planning team. Jennie Brown joined as Director of Private Client Tax Services on 1 April and Kathryn Walshaw joined on 25 March as Private Client Tax Manager.

The appointments are a significant addition to both the firm and our clients, allowing us to expand the services we offer and grow the expertise within the team.

Jennie is a Chartered Tax Adviser with over 15 years' experience in Private Client Tax and has developed particular specialisms in Inheritance Tax and IR35. Jennie is passionate about working closely and building strong relationships with clients to support their journey.

Kathryn joins the firm with over 20 years' experience in Private Client Tax, working more recently with owner-managed businesses but previously with the agriculture sector. Kathryn covers a wide range of taxation issues in the private client sector but has a particular passion for overseas issues including residence and domicile.

The new arrivals are a further boost to our Tax and Wealth Planning team following the appointment of Ann Bibby as Tax and Wealth Planning Partner in February 2017.

Ann Bibby commented:

> *"We are very excited to welcome Jennie and Kathryn to the team. Their significant experience in Private Client Tax will be an invaluable resource for our growing tax team and the firm as a whole, and allow us to expand the range of services and solutions we are able to offer our clients."*

Where do you stand within the IR35 gameshow? Win, draw or lose?

HMRC are struggling to apply the rules of IR35

Designed to ensure fairness but even HMRC are struggling to apply the rules resulting in IR35 becoming a bit of celebrity at the moment. Much like a popular Saturday night game show, you win some and lose some, the exception here is that it is the players that are the celebrities.

The legislation is receiving much of a public airing at the moment and this has resulted in confusion and hysteria which as a result, people won't take matters seriously. 'If HMRC cannot apply the rules then why should we even bother' I hear. However, ignoring whether the rules may impact you and your business is the wildcard within this game show and as we all know, you could win a lot, but lose everything.

Recent cases against TV Presenters
The recent cases with Kay Adams and Christa Ackroyd, whilst focused on presenters which many may feel is detached from their situation, these cases do provide us with lessons of HMRC's approach and the emphasis given to certain areas of the rules.

For example, whilst Christa Ackroyd lost her appeal, on review of her case, her role was under much control, she had extras such as a clothing allowance and almost all of her work and income was from the BBC. Not to mention she had lengthy contracts in place and had to get permission to work elsewhere.

Kay Adams however, was successful in her appeal; in control of her role on Loose Women, writing her scripts and dictating how the show played out, she also had only 1 year contracts, multiple sources of income and no pay when she was unable to present due to family commitments.

Supporting this was Lorraine Kelly's victory against the BBC which focused on the importance of control, together with there being no guarantee of work, no paid holidays and sick pay, and Lorraine having multiple sources of income. The outcome of Lorraine's case also further highlights the questionable HMRC CEST tool and its reliability.

Whilst famous names continue to battle with HMRC as it is announced HMRC blitz BBC presenters with tax demands, in the background, the public sector is within the regime, guilty until proven innocent, they are responsible for ensuring the rules are applied correctly to all contractors. Not only do businesses need to ensure those Limited Companies are dealt with correctly, but also businesses should review the employment status of sole trader contractors.

What does this mean for private sector businesses?

With all this to come into force in April 2020 for the private sector, there will be appeals to delay this due to HMRC's apparent inability to apply the rules. However, as it stands the private sector looks likely to be hit.

Not only do businesses need to be concerned by IR35 and employment status in general, but businesses have also been made aware of a third person within their workforce they need to be mindful of; the worker. We now have a hybrid sole-trader/employee for legal purposes only. Those seemingly in business on their own account and not on the payroll could still have legal rights to things such as sickness and holiday pay as high profile cases like the Pimlico Plumbers and Uber demonstrate.

Business owners may feel as in control as turning the spinning wheel in each great family game show when it comes to knowing what action to take; how much time and money do they invest and does anyone really know the best advice?

How can we help?
Here at Ellacotts, our specialist tax team keep fully up to date in this area and regularly undertake workforce assessments to explain where businesses are at risk, from both the personal service company's perspective and the Intermediary business, which may have a varied workforce. By applying the rules as they stand and putting sensible measures in place, we can ensure you are doing all you can to comply with the rules and are acting in the spirit of the law.

If you feel you may be affected by IR35 and the associated rules and changes then do get in touch with Jennie Brown on jbrown@ellacotts.co.uk or 01536 646000 to arrange a meeting to discuss your position.

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Are you aware of the increased tax on termination payments from April 2020?

Termination payments are commonplace and useful to employers when negotiating settlement agreements. Many people are aware that the first £30,000 of certain termination payments are tax-free for both Income Tax and employer and employees National Insurance Contributions (NIC). However, both the government and HMRC felt there was a loop-hole as to how termination packages were being structured and in 2012 proposed rule changes started to emerge after government consultation, regarding the simplification of the tax rules for termination payments.

Unsurprisingly, this leads to a change of rules which are anything but simplified and result in increased costs to employers which businesses should be mindful of.

The tax rules for termination payments, specifically what is qualifying and forms part of the £30,000 exemption are detailed and advice should be sought on what makes up a termination package. This blog highlights the 2018 and 2020 changes employers need to be aware of.

From 6 April 2018, new rules came into effect which means that all Payments in Lieu of Notice (PILON), equivalent to the employees unworked period, would be subject to both employee and employer NIC in full as well as Income Tax. The term PILON is in most employment contracts and allows an employer to pay an employee a sum owed for their notice period without the employee having to actually work their full notice period. The reason for the change was that the PILON clause was being stripped from contracts, to enable payments made for periods which employees didn't work to be covered by the £30,000. By terminating an employee immediately who had no PILON clause in their contract, the payments would no longer be treated as earnings and therefore qualify under the £30,000 exemption. Both HMRC and the government were concerned that contracts were being structured to manipulate this loop-hole and so the rules were changed.

In addition, two further changes were made in 2018 removing foreign services relief and making the tax exemption for injury to feelings condition a recognised medical condition.

Employers need to be aware of these changes and understand the impact the increased costs to their business this may bring.

In addition to this, delayed changes are now set to come in from 6 April 2020, that means payments in excess of the £30,000 exemption will attract employers NIC. It is anticipated the additional NIC will be collected in real-time as part of the employers' payroll. Although the employers NIC treatment of termination payments will change, the existing employee NIC exemption will be retained even if the payment exceeds £30,000.

In summary, payments made that relate to an unworked period will be fully taxable by both the employee and employer together with employers facing increased costs in relation to NIC on termination payments above the £30,000 exemption. To reduce costs, where possible businesses who have imminent settlement agreements in excess of the £30,000 exemption should look to conclude these before the rules change.

If you feel you may be affected by changes to termination payments and the associated rules then do get in touch with Jennie Brown on jbrown@ellacotts.co.uk or 01536 646000 to arrange a telephone call or meeting to discuss your position.

Extracting profit from the family business

The start of the new tax year means that shareholders and directors may want to review the salary and dividend mix for 2019/20. The £3,000 employment allowance continues to be available to set against the employers' National Insurance Contribution (NIC) liability which means that where the company has not used this allowance it may be set against the employers NIC on directors' salaries.

Thus, where the only employees are husband and wife there would generally be no PAYE or employers NIC on a salary up to the £12,500 personal allowance.

There would however still be employees NIC at 12% on the excess over £8,632 (£166 per week) which would be £464 on a £12,500 salary, leaving the £12,036 net.

Taxation of Dividend Payments in 2019/20

Traditional advice would then be to extract any additional profits from the company in the form of dividends. Where dividends fall within the basic rate band (now £37,500) the rate continues to be 7.5% after the £2,000 dividend allowance has been used. Thus where husband and wife are 50:50 shareholders they would each pay £2,663 tax on dividends of £37,500 assuming they have no income other than a £12,500 salary, leaving £34,837 net of tax. So a combination of £12,500 salary and £37,500 in dividends would result in £46,873 (93.7%) net of income tax and NICs.

Ensure dividend payments are legal

The Companies Act requires that companies may only pay dividends out of distributable profits. This means that in the absence of brought forward reserves the company would need to provide for 19% corporation tax in order to pay the dividends and thus there would need to be profits of £92,593 in order to pay dividends of £75,000 (after providing corporation tax of £17,593).

Overall the combination of salary and dividends suggested above would result in net of tax take home cash of £93,746 for the couple out of profits before salaries and corporation tax of £117,593 (20.3% overall tax). This still compares very favourably with the amount of tax and NIC payable if the couple were trading as a partnership.

Do you need help with extracting profit from your business?
If you would like advice on how to extract profits from your family company in the most tax efficient way please contact Jennie Brown on jbrown@ellacottts.co.uk or 01536 646000 to arrange a telephone call or meeting to discuss your position.

Tax planning to minimise the High Income Child Benefit Charge

The substantial increase in the higher rate threshold to £50,000 is good news for many taxpayers. However, that same figure is the point at which Child Benefit starts being clawed back and there has been no increase in that threshold since the High Income Child Benefit Charge was introduced in 2013/14.

The charge applies if you have adjusted net income over £50,000 and either:

- you or your partner get Child Benefit

- someone else gets Child Benefit for a child living with you and they contribute at least an equal amount towards the child's upkeep

It does not matter if the child living with you is not your own child.

Adjusted net income is your total taxable income before any personal allowances and less things like Gift Aid and pension contributions.

The charge is 1% for every £100 that adjusted net income exceeds £50,000 multiplied by the Child Benefit claimed in respect of the children. Child Benefit continues to be paid at the rate of £20.70 a week for the eldest child and £13.70 for each additional child.

Example
A couple with 2 children would receive £1,789 a year in Child Benefit. If the husband, a sole trader, made a profit of £55,000 (also his adjusted net income) after paying his wife a salary of £12,000 he would have to pay the High Income Child Benefit Charge of £894 (for 2018/19) in addition to his normal income tax and NIC bill.

If he brought his wife into partnership and they shared profits equally their income would be £32,500 each and there would be no high-income child benefit charge. Similarly, if the business was a limited company they would be able to equalize their income so that the charge would not be payable.

If you would like advice on how to use your family business to minimise your tax liabilities please get in touch with Jennie Brown on jbrown@ellacotts.co.uk or 01536 646000 to arrange a telephone call or meeting to discuss your position.

"Rent a room" relief to continue for Airbnb landlords

Last year HMRC carried out a review of rent a room relief and it was proposed that the availability of this generous relief would be restricted to situations where the taxpayer was resident for at least part of the time when the "lodger" was paying rent. The scheme currently exempts from tax gross rents up to £7,500 where rooms within the taxpayers' main residence are rented out.

HMRC were concerned that the relief was being "abused" by letting out the entire property using websites such as Airbnb and living elsewhere temporarily whilst the tenants were in the property. An example would be renting out a house in south London during Wimbledon fortnight and potentially receiving up to £7,500 tax-free.

While the Autumn Budget announced that the proposed restriction was now not being introduced, other restrictions may be applied in the future. Therefore it is important to think about how to rent your property out in the most tax efficient way. Please get in touch with Ann Bibby on abibby@ellacotts.co.uk or 01295 250401 to discuss your property.

Possible changes to Capital Gains Tax Private Residence Relief

The government is currently consulting on important changes to Private Residence Relief that are likely to be introduced from 6 April 2020.

The two possible changes, announced in the Autumn 2018 Budget are:

1. Firstly to limit to just 9 months the period prior to disposal that counts as a period of deemed occupation
2. The second is to limit “letting relief” to periods where the taxpayer is in shared occupation with the tenant

Final period exemption to be reduced
The final period exemption was for many years three years and was always intended cover situations where the taxpayer was “bridging” and waiting to sell their previous residence. However, 36 months was felt to be too generous and was allegedly being abused by a strategy known as “second home flipping”. As a result the final period relief was restricted to the current 18 month period of deemed occupation a couple of years ago. The latest proposal is to restrict still further to 9 months although it will remain at 36 months for those with a disability, and those in or moving into care.

Possible Lettings Relief Changes
Lettings relief currently provides a further exemption for capital gains of up to £40,000 per property owner. The additional relief was introduced in 1980 to ensure people could let out spare rooms within their property on a casual basis without losing the benefit of PRR, for example where there are a number of lodgers sharing the property with the owner.

In practice lettings relief extends much further than the original policy intention and also benefits those who let out a whole dwelling that has at some stage been their main residence. It is those situations that the government appear to be attacking under the proposed changes.

Note that those who are renting their property temporarily whilst working elsewhere in the UK or working abroad are unlikely to be affected by this change as there are alternative reliefs available under those circumstances.

Please contact Ann Bibby on abibby@ellacotts.co.uk or 01295 250401 to check if you are likely to be affected by the proposed changes as it may be worth considering disposing of the property before the new rules are introduced from 6 April 2020.

Tax Diary May/June 2019

Below are important tax deadlines that you need to be aware of:

1 May 2019 - Due date for Corporation Tax due for the year ended 30 July 2017 (unless quarterly instalments apply).

19 May 2019 - PAYE and NIC deductions due for month ended 5 May 2019. (Due 22 May 2019 if you pay your tax electronically.)

19 May 2019 - Filing deadline for the CIS300 monthly return for the month ended 5 May 2019.

19 May 2019 - CIS tax deducted for the month ended 5 May 2019 is payable by today.

31 May 2019 - Ensure all employees have been given their P60s for the 2018-19 tax year.

1 June 2019 - Corporation tax payment for year to 31/08/18 (unless quarterly instalments apply)

19 June 2019 - PAYE & NIC deductions, and CIS return and tax, for month to 5/06/19 (due 22/06 if you pay electronically)

If you would like any help or advice on any tax issues please contact our specialist Tax and Wealth Planning Partner, Ann Bibby on abibby@ellacotts.co.uk or 01295 250401 or fill out our contact form.