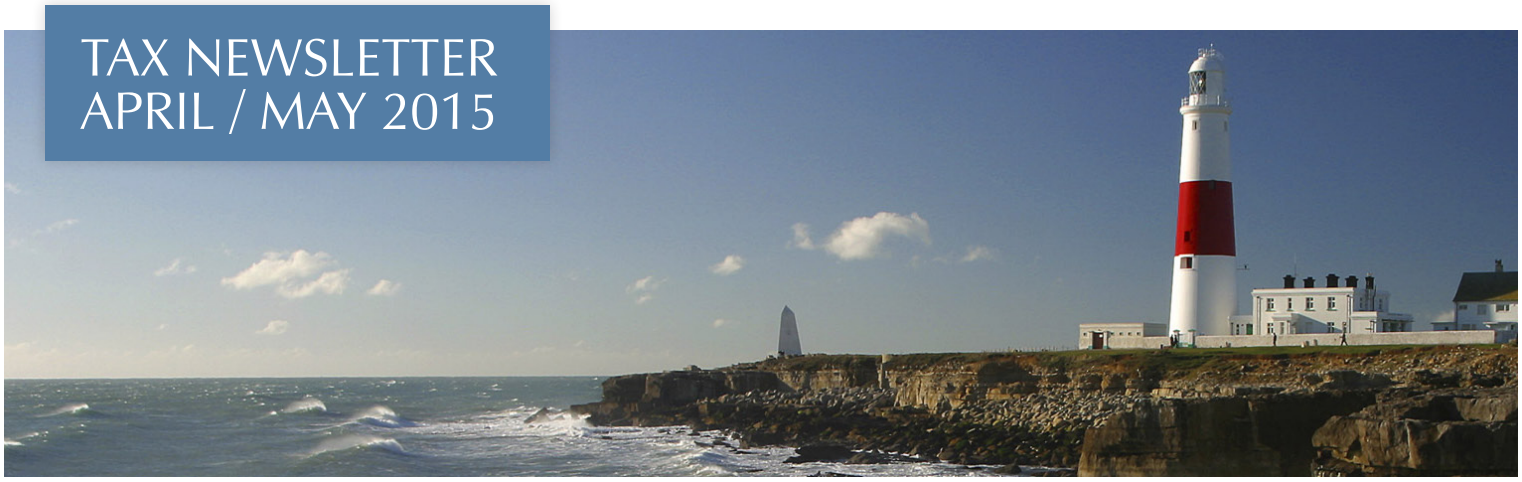
CHARTERED ACCOUNTANTS, TAX CONSULTANTS & FINANCIAL PLANNERS

ALBERT GOODMAN

TAX NEWSLETTER APRIL / MAY 2015



Welcome to this month's Tax eNews. With David Cameron celebrating a surprise victory in the recent election, we take a closer look at the Conservatives' tax manifesto and also consider the future of the annual investment allowance under the new government.

We also take a look at the tax implications of buying a dental practice and incorporating such a business following the introduction of new rules in December 2014.

Please do contact us if you would like more information on any of this month's articles.

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CONSERVATIVES' TAX MANIFESTO

The Conservatives set out various tax pledges in their manifesto and an overview is given below. As always, it will be interesting to see exactly which pledges are honoured and which are diluted or taken from other parties:

Key tax policies

- Make Britain the best place in the world to start a business by giving businesses the most competitive taxes of any major economy;
- Commit not to increase the rate of VAT or NICs, with a law to be passed banning any rise in income tax, VAT or NICs during the lifetime of this Parliament;
- Keep our economy secure by running a surplus so that we start eliminating the deficit and keep taxes and taxpayers' own mortgage payments down;
- Set a significantly higher, permanent level for the annual investment limit.

National

- Allow farmers to smooth their profits for tax purposes over five years, up from the current two years, to counter income volatility;
- Keep the bank levy in place and restrict the ability of established banks to pay less tax by offsetting their profits against past losses;
- Continue to help smaller businesses take on new workers through the employment allowance, which exempts the first £2,000 of employers' NIC so that a third of employers pay no NICs;
- Oppose the other parties' plans to increase corporation tax;
- Conduct a major review into business rates by the end of 2015 to ensure that from 2017, they properly reflect the structure of our modern economy;
- Maintain the abolition of employers' NICs for the under 21s and next year for young apprentices under 25.

International

- Ensure Britain continues to have the most competitive business tax regime in the G20;
- Lead international efforts to ensure global companies pay their fair share of tax;
- Review the implementation of the new international country by country tax reporting rules;
- Ensure developing countries have full access to the automatic tax information exchange systems;
- Continue to build the capacity of tax authorities in developing countries.

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STABILITY FOR THE ANNUAL INVESTMENT ALLOWANCE?

The Annual Investment Allowance ("AIA") is the amount a business can spend on capital plant and machinery in the year and get tax relief in full for it in that same year. To the extent that AIA is not available, it can take businesses between 25 and 30 years to get tax relief for their capital costs.

Labour introduced the AIA in April 2008, setting it at £50,000 per annum and later increased this to £100,000. When the Coalition came in, a number of temporary changes were made to the AIA, first slashing it to only £25,000 for expenditure incurred on or after 1 April 2012, then increasing this to £250,000 from 1 January 2013. It was further increased to £500,000 from 1 April 2014.

The AIA is currently set to plummet to only £25,000 from 1 January 2016 and many smaller businesses have brought forward capital projects to bank the higher rate of relief, using the tax savings to partially fund their projects. At the same time, this has placed strains on cash flows by bringing projects forward, whilst businesses might still be going through a period of recovery.

The business community expected the decision to reduce the AIA to be reversed in this year's Budget, but we were disappointed when Mr Osborne only acknowledged the decrease was dramatic but would not commit to looking at

this until at least the Autumn.

However, **the Conservatives have pledged, as part of their manifesto, that they will set a new, significantly higher, permanent level for the AIA.** What is not clear is whether this will be higher than the current £500,000 or the £25,000, although I expect they mean the latter.

£25,000 per annum is far too low and does not impact on the investment decision for many small to medium sized businesses. It would be great news for businesses if the current level of £500,000 was made permanent, but whatever the level, making the rate permanent will help give businesses certainty over what relief they are entitled to on capital investment and when, rather than having to make rushed decisions to take advantage of temporarily high rates.

Let's hope that this is one part of the manifesto that is addressed soon.

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BUYING A DENTAL PRACTICE AND INCORPORATING

As dentists are now able to operate through limited companies, many have incorporated in recent years, taking advantage of attractive tax savings to be had on transferring goodwill to the company, as well as receiving tax relief on the goodwill write down in the company where the business either started after 1 April 2002 or it was acquired from an unconnected party. Such a transfer would typically involve selling the goodwill to the company, with capital gains tax being paid at 10% under entrepreneur relief rules ("ER"), in return for a large loan account that could then be drawn down on tax free.

The dentist has then also benefited from further ongoing tax savings, once his loan account has been exhausted, by taking profits out as a mix of basic salary, topped up by dividends, and then often making even more savings by introducing their spouse into the business as a shareholder.

Post 3 December 2014

For businesses transferred to a limited company post 3 December 2014, ER will not be available where goodwill is transferred to a company ***related*** to the transferor. A related company will broadly be one owned by the dentist, or any of his business partners or relatives.

This means a tax charge at 28% will now apply to any gain realised on the disposal of goodwill during an incorporation of a business, although there are ways to defer this charge depending on how the business is incorporated. Alternatively, a 28% charge might still be quite attractive if the dentist is making profits that would otherwise be taxable at 42-47%.

In addition to the withdrawal of ER on goodwill from 3 December 2014, the company will no longer get full tax relief on the write down of the goodwill over the course of its useful life to the company, in many cases only getting relief for its cost on any eventual disposal of the business by the company.

Despite this, incorporations might still be attractive for many dentists and please do get in touch if you would like to consider this further.

But what about the position when a dentist takes over a practice from another dental practitioner, and immediately incorporates the business?

Typical Third Party Acquisition

Because of tax savings, and other commercial advantages of operating through a limited company, a typical dental practice acquisition might take the following form:

Robert is an NHS and private dental practitioner but wants to retire. He has agreed to sell his practice to David, who wants to run his business through a limited company. Robert and David are not relatives of each other and they have never been in business together before. David sets up his company, Pearly Whites, and Pearly Whites acquires all of Robert's dental equipment, practice fixtures, staff and private patient client lists and goodwill.

However, because of NHS contract restrictions, Pearly Whites cannot take over Robert's NHS contract on day one and instead David has to form a quasi-partnership with Robert for about two months, during which time the quasi-partnership earns income from the NHS contract and is charged a management fee by Pearly Whites for its share in the staff costs and plant use. Any profits made by the partnership are shared 99% to David and 1% to Robert.

After the two-three month period, Robert retires from the quasi-partnership and David then subcontracts his NHS contract to Pearly Whites.

What is the tax position for both?

Provided the formation of the quasi-partnership does not take place until immediately after Robert sells his private practice business to Pearly Whites, Robert shouldn't be treated as selling his private practice to a related company and so should benefit from ER on the disposal of the goodwill attached to that part of his business. He will also get ER on his disposal of his 99% interest in the remaining part of the business to David, plus further relief when he exits entirely. Robert should therefore pay capital gains tax at only 10% on his retirement.

For Pearly Whites, it should still get tax relief on the write down of goodwill purchased from Robert over its useful life to the company, as Robert was not connected with Pearly Whites.

Conclusion

The tax position for this type of practice acquisition should therefore stay the same despite the new rules introduced from 3 December 2014. However, the order of the transactions can be important and relationships between the practitioners should be carefully considered. The position might not be as favourable however where there is a delay in the limited company taking over the practice from the retiring dentist and advice should always be taken ahead of any transaction.

If you would like further advice, please contact either Tracey Watts at **tracey.watts@albertgoodman.co.uk** or Nick Hancock at **nick.hancock@albertgoodman.co.uk** Tracey is a Tax Partner at Albert Goodman and Nick is a member of NASDAL, the National Association of Specialist Dental Accountants and Lawyers.

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USING YOUR PENSION TO BOOST YOUR SAVINGS

We often discuss pensions with our clients as a way to reduce tax, but what about using them as a way to boost your savings income instead, particularly if you're a basic rate tax payer or even a non-tax payer?

From this April, an individual has a basic personal allowance of £10,600, and so will not pay any tax until his income is more than this. If the next £5,000 comes from savings, tax will still not be payable up to income of £15,600.

But how many of us have savings that will generate interest of £5,000 when a typical savings rate might only be 1.5%?

Increasing Your Return to 25%

An individual can pay £2,880 into a pension plan every year, regardless of income sources or levels and, provided you are under 75, HMRC then add £720 to your fund: an immediate return of 25%.

If you want to put more into your pension, you need to have "relevant earnings" to match any contributions. This includes employed or self employed income and you can then pay contributions of up to the lower of £40,000 per annum (if you are not already in "pension draw down") or your earnings, with HMRC still adding a 25% top up to your fund.

If you are over 55, you can then take a 25% tax free lump sum from your pension, so on a net contribution of £2,880, a lump sum of £900 can be taken out, with the balance being taxed as it's drawn out. If your other income is £7,900 or less (or up to £12,900 depending on your income sources), no tax would be payable on the balance either if you drew this out in full. If your income was higher, you might want to leave the balance in your scheme.

There might be a small admin fee charged by the pension scheme, but it's unlikely to significantly affect the 25% overnight return on your money, although this should be checked before going ahead.

Next Year

There is no reason why you couldn't then do the same in the following year, although you may need to consider the anti-avoidance rules in that tax charges might be made if HMRC believe the fund is not being used for retirement purposes, or that this comes under pension recycling. However, these rules are unlikely to apply where you take less than £7,500 as a lump sum from your scheme per annum, and you will even better protect the position if you leave the tax credit of £720 behind for a while longer.

Please note that as you are now in pension draw down, you will be limited to making further annual contributions of £10,000 gross, rather than £40,000, although this is unlikely to be an issue unless you go back into employment and become a higher rate tax payer.

Conclusion

This planning might well be restricted in the future but until then, this could be an attractive alternative to putting your money into a low interest bearing bank account, to give your savings an instant 25% boost.

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WARNING OVER PENSION SCAMS

Those approaching retirement are being urged to be aware of a rise in pension scams, as criminals seek new ways to defraud pensioners.

Savers have been urged to be aware of a rise in pension scams, as criminals seek new ways to defraud pensioners. A report produced by Citizens Advice looked at 150 cases where pensioners had fallen victim to fraudsters. The report identified common types of scams which include:

- encouraging pensioners to move their savings into a 'new' pension
- fake investment opportunities and
- offering apparently 'free advice' and support which actually costs money.

In some cases pensioners are charged a fee for a service that isn't required, while others are encouraged to part with personal information and bank details, either by email or phone.

Gillian Guy, Chief Executive of Citizens Advice said:

'Scammers see pensioners as a prime target….'There are many people looking to benefit from the new pension rules, including scammers. Fraudsters can ruin people's retirement plans by taking a portion or all of a victim's pension pots.'

The Pensions Regulator (TPR) has recently launched a campaign to alert people to the danger posed by fraudsters.

From 6 April 2015 individuals have more flexibility as to how they use their pension pot, including the option to choose to take all their savings as a cash lump sum. TPR has warned that scammers are exploiting this change by enticing those about to retire with promises of 'one-off investments' or 'pension loans' or 'upfront cash', most of which are bogus.

Individuals who believe they are being targeted by a pension scam should contact the Pensions Advisory Service on 0300 123 1047. The Financial Conduct Authority's website also has a list of known scams. Visit **scamsmart.fca.org.uk**

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NON-RESIDENT CAPITAL GAINS TAX ("NRCGT") – A NEW CGT REGIME FOR NON-UK RESIDENTS DISPOSING OF UK RESIDENTIAL PROPERTY

From 6 April 2015 a new CGT regime applies to non-UK resident persons (individuals AND companies) who dispose of UK residential property.

Up until now, non-UK resident persons were not generally liable to UK CGT on the disposal of assets whether situated in the UK or elsewhere.

The new regime, introduced by Finance Act 2015, means that non-UK residents are now subject to CGT if they dispose of UK residential property on or after 6 April 2015. In most cases the disposal date will be the date on which exchange of contracts takes place.

Who is affected?

The new NRCGT regime applies to non-resident individuals and trustees, personal representatives of non-resident deceased persons and certain non-resident companies (generally those controlled by five or fewer persons).

Non-resident individuals will be subject to CGT at the same rate as UK individuals i.e. 18% or 28% depending on the level of their taxable UK income. They will be entitled to an annual exempt amount (£11,100 for the 2015/16 tax year) in the same way as UK residents. Main residence relief may be available where the individual has lived in the property as their main residence at some point during the period of ownership and certain conditions are met.

Non-resident trustees and personal representatives of non-resident deceased persons will be subject to CGT at a flat rate of 28%.

Non-resident companies will be subject to corporation tax on their gains (after deducting any available indexation allowance) at the rate of 20%.

There is an exception to the new rules for properties to which the Annual Tax on Enveloped Dwellings ("ATED") applies. Gains made on the disposal of such properties are subject to ATED-related CGT irrespective of where the non-natural person or company making the disposal is resident.

How is the gain calculated?

Only that proportion of the gain that relates to the period after 6 April 2015 will be subject to NRCGT.

The default position is that the value of the residential property is rebased to its market value at 6 April 2015 for the purpose of calculating the gain arising.

Alternatively, the taxpayer may elect for the gain on the property to be time apportioned to the period after 5 April 2015, or may elect to be taxed on the gain made over the entire period of ownership. This election will allow for any diminutions in value prior to 6 April 2015 which might potentially reduce the taxable gain and it may be beneficial where the property is standing at an overall loss.

What do I need to do?

Disposals of UK residential property will need to be reported on a NRCGT return which must be submitted to HM Revenue & Customs ("HMRC") **no later than 30 days after the date on which completion of the sale takes place. Any CGT arising must be paid by 30 days after the completion date.**

The CGT payment deadline is extended for those already within the Self-Assessment tax return system where the CGT will become payable on or before 31 January following the tax year in which the disposal took place. Such persons have the option of paying the CGT at the time of reporting the gain.

All disposals must be reported on a NRCGT return to HMRC irrespective of whether there is a CGT liability. The same reporting process applies even where a UK residential property is sold at a loss, or where a gain is covered by the annual exempt amount, or where a gain is covered by a relief such as main residence relief or capital loss.

What happens if I make a loss?

Losses on the disposal of UK residential property will be ring-fenced for use against gains on such properties that arise to the same non-resident in the same tax year. Any unused losses can be carried forward to be used in later tax years. Where a person's residence status changes from non-resident to UK resident, any brought forward ring–fenced losses will be available to use as general losses against other chargeable gains.

As will be appreciated, the new rules impose strict tax return reporting and payment requirements so if you think that you might be affected, then please contact Tara Hayes at tara.hayes@albertgoodman.co.uk

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NEW PENSION DEATH BENEFITS

Accessing pensions became more flexible from 6 April 2015, as well as changes being made to pension death benefits. But what are those changes?

Under 75 years

First, the changes will depend on whether the pension scheme member (you) dies before or after reaching the age of 75, regardless of whether or not you have already accessed your pension fund.

It will then depend on whether or not the administrator pays any lump sum benefits out within or later than two years of your death.

- Within two years - tax free lump sum
- After two years - 45% special lump sum death benefit charge (SLSDBC)

Alternatively, any death benefits within the LTA (see later) can be paid through flexi-access drawdown and the tax treatment of this again depends on whether the funds are designated into a flexi-access drawdown within two years of your death or later.

- Within two years - no tax charge on the draw down/ annuity
- After two years - taxed as income of the beneficiary under PAYE.

75 or over

On the other hand, if you are 75 or over when you die, the tax on lump sum benefits is as follows:

- Lump sums - 45% tax charge (SLSDBC), or
- Funds paid in flexi-access drawdown - taxed as income on the beneficiary under PAYE.

Please note that, subject to consultation, the lump sum might change to be being taxed as beneficiaries' income from 2016/17 rather than an automatic charge of 45% applying.

Who can receive death benefits?

This answer will depend on how the fund is paid out, either as a lump sum or income drawdown payments.

- Lump sums - broadly, these are generally paid out by the administrator exercising their discretion in favour of any number of beneficiaries named in the discretionary class of scheme rules.
- Income draw down - any person nominated as being the next person entitled to the drawdown, which means the pension plan could remain in force long after you have died.

The nomination can be made by the current beneficiary, which might be you or someone else, or the administrator. Beneficiaries may now include anyone, including adult children, grandchildren, other family members or non family members.

Inheritance tax (IHT)

Broadly, the fund will automatically be free from IHT provided the choice of beneficiary is not irrevocable and the administrators retain discretionary powers on who should receive any death benefits.

Lifetime allowance (LTA)

Unless a pension scheme has been certified for a higher LTA, any benefits including death benefits paid out where the fund value exceeds £1.25 million in 2015/16 will suffer a 55% charge on lump sum payments and a 25% charge on income payments other than those paid as a scheme pension. The Budget 2015 included a provision for the LTA to reduce to £1 million from next April. All the above assumes funds being paid out from a scheme with a value not exceeding the LTA.

Going forwards

Given the potential for greater flexibility with pension death benefits now, pensions have become a powerful IHT planning tool, with funds being able to be paid through the generations tax free. Thought must surely now be given to saving through a pension wrapper in your lifetime and passing these free from IHT on death, perhaps to help pay school fees or help younger generations get on the property ladder, rather than making a provision in your will for cash or property to be inherited instead, which could suffer a 40% IHT charge.

The rules are complex and some of the arrangements will depend on the scheme administrators, which might possibly mean funds will need to be moved to a different scheme. You may also need to consider setting up a discretionary trust in your lifetime for death benefits to be paid to instead, to provide wealth protection for your fund should a potential drawdown beneficiary try and take the funds out as a lump sum instead, or to protect your fund from a beneficiary's spouse or creditors, perhaps.

If you would like any advice on the new rules, please do get in touch.

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OTHER CONSEQUENCES OF ATED

In last month's **Tax eNews,** we looked at the Annual Tax on Enveloped Dwellings ("ATED") charge, the annual charge which applies where a non-natural person ("NNP") owns a dwelling worth more than £2 million, and the fact that this limit is reducing to £1 million from 1st April 2015 and to only £500,000 from 1st April 2016.

To remind you, a NNP can be a company, a partnership with at least one corporate member or a collective investment scheme, and the return applies to the value of any individual dwelling held, rather than to the value of the overall investment portfolio, with the annual return and payment due for the year ended 31 March 2015 being due for submission by 30th of April 2015, unless coming under the rules for the first time in 2015/16, in which case the filing deadline is 31 October 2015.

Where the ATED charge applies, various other issues might apply: stamp duty land tax ("SDLT") is payable at 15% on property purchases over £500,000. Capital gains tax is also payable on any ATED-related gain at 28%. Where property is partly subject to the ATED charge and partly exempt, the gain is partly chargeable to ATED-related CGT and partly at normal rates, usually 20%.

As the limits fall, more and more properties owners are going to get caught by the ATED and associated tax issues. Whilst exemptions are available, these do need to be claimed via the annual return and penalties will apply if the returns are submitted late.

If you think this might apply to you, please do get in touch bearing in mind the filing deadlines.

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AUTO ENROLMENT UPDATE FOR SMALL EMPLOYERS

The Pensions Regulator (TPR) has updated its guidance on pensions auto enrolment including what businesses need to do when they have no workers.

If you would like help with auto enrolment please do get in touch.

Internet link: TPR guidance

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P11D FORMS - DON'T GET THEM WRONG

HMRC have published a list of common errors in the completion of forms P11D. The information is part of the latest Employer Bulletin and we have reproduced the guidance below.

- Submitting duplicate P11D information on paper where P11D information has already been filed online to ensure 'HMRC have received it'. These duplicates can cause processing problems.
- Using a paper form that relates to the wrong tax year – check the top right hand corner of the first page.
- Not ticking the 'director' box if the employee is a director.
- Not including a description or abbreviation, where amounts are included in sections A, B, L, M or N of the form.
- Leaving the 'cash equivalent' box empty where you've entered a figure in the corresponding 'cost to you' box of a section.
- Completing the declaration on the final FPS/EPS submission accurately (for those employers whose software package requires them to be completed) or question 6 in section A of RT 4 form to indicate whether P11Ds are due.
- Not advising HMRC either by paper form P11D(b) or electronic submission that there is no Benefits in Kind & Expenses return to make.
- Where a benefit has been provided for mixed business and private use, entering only the value of the private-use portion – you must report the full gross value of the benefit.
- Not completing the fuel benefit box/field where this applies. This means an amended P11D has to be sent in.
- Incorrectly completing the 'from' and 'to' dates in the 'Dates car was available' boxes. For example entering 06/04/2014 to 05/04/2015 to indicate the car was available throughout that year. If the car was available in the previous tax year, the 'from' box should not be completed and if the car is to be available in the next tax year, the 'to' box should not be completed.

If you would like help with the completion of the forms P11D, please do contact us.

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HMRC TARGETS 'RISING STARS'

HMRC's 'Rising Stars' team was launched in 2012 to investigate the tax affairs of individuals with rapidly rising incomes and a net worth of at least £15 million. It also looks at those with the potential to meet the £20 million wealth criteria for the High Net Worth Unit within the next five years.

Over the last year, the 'Rising Stars' team has intensified its scrutiny of those who are wealthy and newly successful entrepreneurs, professionals and celebrities. Investigations by this team collected £6.6 million in extra tax for the 2013/14 tax year, an increase of 35% on the amount collected by this team in 2012/13.

Units focused on High Net Worths tend to have a smaller ratio of taxpayers to HMRC officers which means resources are more concentrated, and as a result investigations tend to bear more fruit. Monitoring from an early stage those

rising quickly through the ranks at investment banks and other financial services firms for example, HMRC hope to undertake more efficient scrutiny as they move into a higher wealth bracket.

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VAT RECOVERY ON CAR-DERIVED VANS AND COMBI VANS

HMRC have issued a list of makes and models of car derived vans and combi vans which VAT registered businesses can use to determine if the VAT paid on the purchase can be reclaimed as input tax.

The issue is that VAT will normally be claimable in full on the purchase of a commercial vehicle. However if the vehicle purchased is a passenger car VAT is not recoverable unless it is used 'exclusively for the purposes of a business'. Generally cars are therefore VAT 'blocked' and no input VAT is recoverable.

The VAT guidance states

'Motor car means any motor vehicle of a kind normally used on public roads which has three or more wheels and either:

a) is constructed or adapted solely or mainly for the carriage of passengers; or

b) has to the rear of the driver's seat roofed accommodation which is fitted with side windows or which is constructed or adapted for the fitting of side windows'

Whether or not a vehicle is commercial is not specifically defined but instead the definition of a car excludes:

- vehicles capable of accommodating only one person or suitable for carrying twelve or more people including the driver
- vehicles of more than three tonnes unladen weight;
- caravans, ambulances and prison vans
- special purpose vehicles such as ice cream vans, mobile shops, hearses, bullion vans and breakdown and recovery vehicles
- vehicles constructed to carry a payload of one tonne or more.

Many car-derived vans are not cars for VAT purposes as they have no rear seats, have metal side panels to the rear of the front seats and a load area which is highly unsuitable for carrying passengers etc.

HMRC have issued the clarification due to developments in the car-derived van market as some vehicles with a payload of less than one tonne, have 'blurred' the distinction between cars and vans.

If you would like help with this or any other VAT issue please contact us.

Internet link: GOV.UK news

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VAT FUEL SCALE CHARGES

HMRC have issued details of the updated VAT fuel scale charges which apply from the beginning of the next prescribed VAT accounting period starting on or after 1 May 2015.

VAT registered businesses use the fuel scale charges to account for VAT on private use of road fuel purchased by the business.

Please do get in touch for further advice on VAT matters.

Internet link: GOV.UK news

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LACK OF AWARENESS OF VAT RULES

According to research 36% of the UK's smallest businesses are unaware of the rules governing VAT thresholds.

A third of the UK's smallest businesses are unaware of the rules governing VAT thresholds, recent research has revealed.

This lack of understanding could mean that approximately 780,000 businesses are at risk of being fined by HMRC.

Meanwhile, according to the research, 9% of small businesses intentionally limit their trading in order to avoid reaching the VAT threshold.

Under the current rules, where a taxable person (for example an individual, company or partnership) has VAT taxable turnover of more than the current registration threshold of £82,000 in a rolling 12 month period or where turnover is expected to exceed the registration threshold in the next 30 day period then they must register for VAT.

It is important to monitor turnover, as there is a penalty for late registration in addition to the tax payable.

Please contact us if you would like advice on VAT issues.

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