client briefing

Spring 2013

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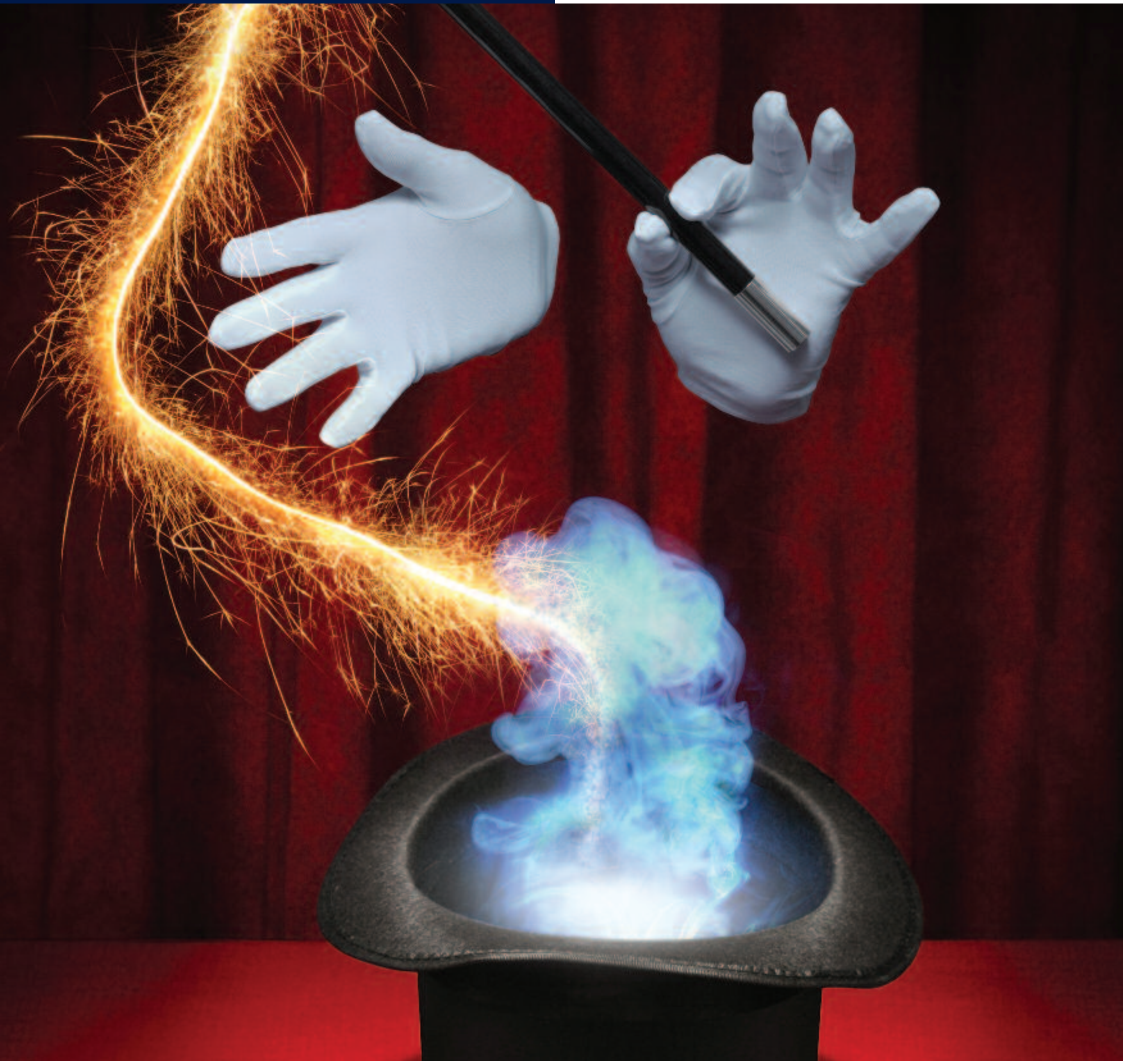

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Surprises in the Autumn Statement

Businesses looking to upgrade their infrastructure have welcomed the Chancellor's unexpected announcement in the 2012 Autumn Statement that the annual investment allowance (AIA) limit will increase to £250,000.

The increase, effective from 1 January 2013, will last for two years, after which it will return to £25,000. The AIA enables businesses to write off the cost of qualifying capital expenditure against tax in the year of purchase and was reduced from £100,000 to £25,000 from April 2012.

A wide range of expenditure qualifies for AIA, including most plant and machinery and some fixtures and integral features of buildings, although not land or the buildings themselves. The most common exclusion is cars, but there is a 100% first-year allowance for cars with carbon dioxide emissions of 110g/km or less. That limit will reduce to 95g/km from April 2013.

Another business-friendly measure in the Autumn Statement is a further cut in the main rate of corporation tax, to 21%, from April 2014. The current 24% rate is due to drop to 23% in April 2013. The Chancellor also confirmed that small unincorporated businesses below the VAT registration threshold will be able to calculate their tax on a new cash basis, by taking business cash received in the year and deducting business expenses paid.

That means they will not have to distinguish between revenue and capital expenditure and can ignore debtors and creditors. Another measure will allow unincorporated businesses of any size to deduct certain expenses on a flat rate basis instead of deducting the actual expenditure they have incurred.

The Autumn Statement marked the demise of an attempt, described as controversial, to require senior people integral to running a business organisation to have income tax and national insurance contributions deducted at source under PAYE. The idea was to stop people avoiding PAYE by being paid through a service company.

After consultation, however, the Government decided that such a measure would be too complex and would not be sufficiently targeted on avoidance. Instead, the Government will continue strengthening its approach to policing the existing IR35 rules.

Share options

There was also a boost to the Enterprise Management Incentive (EMI) share option scheme, which gives tax benefits to employees granted options to acquire shares in a small company.

A draft of the 2013 Finance Bill published on 11 December 2012 included a measure that will make it easier for employees exercising EMI options to pay capital gains tax at 10%, instead of 18% or 28%, on gains made when they sell their shares.

At present, to qualify for the 10% entrepreneurs' relief rate, employees and directors have to hold at least 5% of the shares in the company for a year before selling them.

From April 2013 the minimum 5% shareholding rule will be removed and the one-year qualification period will start from the grant of the option rather than the purchase of shares. That means an employee will be able to accept a share option, hold it for a year, then exercise it immediately before selling the shares, and pay CGT at 10%.

Are you one of the million?

Major changes to child benefit have now come into effect. Around one million families have received HM Revenue & Customs' (HMRC's) letter explaining the new high income child benefit charge (HICBC), which started from 7 January 2013.

The new HICBC applies if your income is more than £50,000 and you or your partner receives child benefit – but you could be subject to a charge where someone, who is not living with you, is claiming child benefit for a child who is living with you. If your income exceeds £60,000, the HICBC will be equivalent to the full amount of child benefit received. Where income is between £50,000 and £60,000 the charge is calculated as 1% of the amount of child benefit for every £100 of income above £50,000. For example, if income is £56,000 then 60% (£56,000 – £50,000 = £6,000/£100) of the child benefit will be clawed back.

You will have to declare the amount of the child benefit in your tax return if your income exceeds £50,000, although employees have the option of paying the charge using their tax code if less than £3,000 of tax is due. Where both partners have an income over £50,000, the person with the higher income must declare the child benefit and pay the HICBC.

For 2012/13, a person's income for the whole year will be used to establish whether a charge applies, but the charge will just be on the amount of child benefit received between 7 January and 5 April 2013.

Income is after deducting trading losses (some special rules apply) and gross pension contributions – whether paid into a company scheme or a personal pension. For many people, additional pension contributions may be the only way of reducing income, ideally to below £50,000. If your income is between £50,000 and £60,000, and you have three children, then each £1,000 of gross contribution will save £645 (40% tax plus a HICBC reduction of over 24%). If the withdrawal of tax credits also comes into play, the saving could be more than 100%.

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If your income exceeds £60,000, you may have decided to opt out of receiving child benefit payments to avoid self-assessment and having to pay the HICBC. But be careful if one partner has a low income; they should still make a child benefit claim in order to preserve their state pension entitlement, even though they receive no net benefit.

Getting ready for Real Time Information

Almost all employers will have to report payroll information on or before every pay day to HM Revenue & Customs (HMRC) electronically in 'real time' from 6 April 2013.

You ought to be well on the way to being ready for the biggest change in PAYE since it was introduced in 1944 but here is what you should do if you are not up to speed.

Most important, you need to make sure that your payroll software can cope with Real Time Information (RTI) or else you should use a payroll bureau. Manual payroll is no longer an option. HMRC is offering its free Basic PAYE Tools to employers with fewer than ten employees. You should register for PAYE online now if you have not already done so and you are not using a bureau – but if you do use a bureau it will have to register as your agent.

Your data must be complete and accurate. You should check you have such basics as your employees' full names spelt correctly, and their genders, dates of birth and national insurance numbers correctly recorded.

Your payroll records will also have to include the approximate number of hours a week each employee works, and full details of any employees who are paid below the national insurance lower earnings limit.

There will be new procedures for all the various changes that may occur, including employees starting, leaving or going on parental leave, reaching state pension age, being given a new tax code and several other situations. You will need to record all this information promptly and pass it to your payroll department or bureau. No end-of-year PAYE return (form P35) will be needed for 2013/14, but you will still have to give employees a form P60 and make online returns of employee benefits and expenses.

RTI will not change the tax payment dates. Your monthly PAYE payments must still arrive with HMRC by the 22nd of the month if you are paying electronically and arrive by the 19th if you're paying by post. You may be charged penalties for late payments.

RTI will bring additional penalties: those for inaccuracy will start in summer 2013 and those for late submissions in April 2014. Finally, don't forget to keep an eye on the PAYE news and updates page on HMRC's website. We can help ensure you are ready for RTI, so please contact us.

More flexibility all round

The Government has announced plans for a new fully flexible system of parental leave to be introduced with effect from 2015.

Women are currently entitled to a maximum 52 weeks' maternity leave. Fathers have been able to take between two and 26 weeks of additional paternity leave since 2011, in addition to two weeks' paternity leave. This is provided the mother has returned to work. Both maternity and paternity leave must be taken in single blocks.

Parents will be given much more flexibility about how they 'mix and match' the entitlement of 52 weeks' leave. An employed mother can still take full maternity leave, but parents could share the leave exactly as they want – maybe taking it in turns or even taking leave at the same time. The only requirement will be for mothers to take the initial two weeks after birth as a recovery period.

What will not change is the amount of guaranteed pay – be it contractual or statutory – which will still only be for nine months. Employed mothers will benefit, especially where they are the higher earner. The hope is that, in future, motherhood will have less impact on womens' career prospects because fathers will be able to take time off work for extended periods. Fathers will have more flexibility if they want to be involved in their children's early upbringing, and employers may also benefit if the burden of leave is more evenly spread across two employers.


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Plans have also been announced to widen the right to ask for flexible working. Presently, this right generally only applies to parents or carers of children under 17. The proposal is that all employees will have the right to request flexible working, with employers having to consider the requests in a reasonable manner.

Flexible working can take many forms, including job sharing, working from home, working part-time, flexitime and working the same hours but over fewer days. Flexible working should lead to a better-engaged workforce with improved productivity and performance. However, flexible working can be more difficult for smaller businesses to organise. The change is expected to take place in 2014.

HMRC set to name and shame tax defaulters

This year could see the first naming and shaming of deliberate tax defaulters by HM Revenue & Customs (HMRC), who will be able to publish details of those who have evaded tax.

The legislation was introduced in 2010, but has yet to be used. It applies to return periods starting on or after 1 April 2010, and to failures or wrongdoings from that date. Previously, HMRC could only publish details of tax evaders in criminal cases.

The scheme is aimed at the more serious cases of tax evasion; so for a taxpayer to be in danger of being named, the amount of tax evaded must exceed £25,000. This threshold is worked out by adding together all taxes that have been subject to a penalty for a deliberate error – and it is for all periods after 1 April 2010. Naming can apply to individuals, partnerships and companies, and the taxes covered include income tax, corporation tax, PAYE, capital gains tax, VAT, national insurance and inheritance tax.

Naming can only take place after a compliance check, so there are two ways that major tax evaders can avoid seeing their names in print. The first and most obvious option is to make a full and complete disclosure before the start of any check. The second approach is to make a complete disclosure at the start of a check and then to co-operate with HMRC afterwards. Such action should result in HMRC granting the maximum penalty reduction, and where they give this, HMRC will not publish any details of the taxpayer.

Taxpayers will have the opportunity to make representations about why their details should not be published, although HMRC have said that details will be withheld from publication in only exceptional circumstances.

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HMRC will publish details on their website, where they will remain for up to 12 months. They will provide the minimum amount of information necessary to identify the person or company – including addresses, as well as the amount of tax involved. In many cases, it is likely that the local press will publish details as well.

Publication can only occur as a result of a deliberate error rather than carelessness – so in future, HMRC can be expected to argue that more errors are deliberate. It remains to be seen when the first naming and shaming occurs, but given the start date, it is most likely to be for a VAT offence.

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Your shares or your rights?

The Government is pushing ahead with its shares for rights scheme. It is included in the Growth and Infrastructure Bill that has been making its way through Parliament – despite receiving a generally lukewarm response.

The scheme will create a new type of employment status called 'employee-owner'. In return for giving up various employment rights, an employee-owner will receive shares in their employer's company worth between £2,000 and £50,000 – with the shares exempt from capital gains tax (CGT). The employment rights given up include those relating to unfair dismissal, redundancy, and the right to request flexible working or time off for training.

For existing employees the new employee-owner status will be voluntary, but an employer could choose to offer only this type of contract to new employees. However, there is nothing to stop a company including more generous employment conditions into an employee-owner contract should it wish to.

The scheme has been criticised on a number of fronts, especially because it is seen as a back door way of reviving the previously shelved 'fire at will' proposal. Some employers may see £2,000 of equity as a small cost to pay for being able to hire employees with far fewer employment rights than normal.

Although the Government is keen for the new contract to be seen as a way of

empowering employees, the shares acquired need not confer any voting rights. Nevertheless, having employee shareholders could be inconvenient in some circumstances. And the CGT exemption will be of little value for the average employee.

As it currently stands, the scheme could open up some useful tax planning opportunities, especially for more senior personnel. They could be given the maximum of £50,000 of tax-exempt shares, with the employer subsequently returning their employment rights. It may therefore be attractive to start-ups, where there is the potential for substantial gains. The planned introduction date is April 2013.

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