Volume 10 Newsletter

Showing you the way ahead

Now is the time to review your finances

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As with all our newsletters we aim to bring to your attention news that is interesting and helpful enough for you to make the right decisions.

Employee Remuneration Plans

Employers keen to maximise the effectiveness of incentive arrangements for senior employees will be conscious of the tax burden which applies to any profit which may arise. Normally it will be beneficial for the profit to be taxed as capital gain rather than income following the cut in the CGT rate to a flat 18% in Finance Act 2008 and the proposed increase in the top rate of income tax from April 2010. Conventional share options will be subject to income tax unless they meet the statutory requirements of one of the approved schemes. The values which can be vested in such schemes are low by the standards of senior executives.

A recent development has been to introduce arrangements known as joint share ownership plans with a view to securing CGT treatment for the executives. The idea is that shares are acquired by executives at their market value and subsequently disposed of by them as part of a classic capital transaction. The novel thinking has gone into how the cost and risk for the executives can be reduced whilst maximising the potential profit and staying within the CGT regime.

A popular arrangement is for shares in the employing company to be owned jointly by the employee and another entity. Since the company cannot own shares in itself an employee benefit trust, or EBT, is normally used as the joint owner. A key feature is that under UK law an asset can be jointly owned but on unequal terms. In this case on an eventual sale of the shares the proceeds might belong to the EBT up to their market value at the time the plan was started and belong to the executive above that level. Alternatively the EBT might take a “hurdle” of say 5% per annum before the executive participates.

As noted above, the price paid by the executive for his participation in the shares will need to be market value; any undervalue will be taxed as income from an opportunity arising as a result of the executive’s employment. However, given discounts for minority and the uncertainty that any uplift will be achieved this market value will often be very low. The main advantages of Joint Share Ownership Plans are the CGT treatment of any profit and ability to tailor the terms to ensure that the employee only benefits when the company increases significantly in value. The shares can also be vested in the EBT on behalf of itself and the executive for administrative convenience. The value of the shares will need to be agreed with the HMRC.

WiltonGroup is a specialist in advising companies on the opportunities available through Share Option Plans and Employee Benefit Trusts. The tax saving opportunities from a well constructed plan are considerable and WiltonGroup is well placed to advise both UK companies and international groups. Please contact Jon Elphick for advice on 020 7355 3525.

VAT-EC Sales List Requirements

1st January 2010 sees a number of changes to the VAT legislation which have been introduced across the European Union as a result, in part, of the so called VAT package. There are revised requirements for the filing of EC Sales Lists (ESL's) or "recapitulative statements". These changes will be of relevance to those businesses that supply goods or services from one EU country to a VAT registered business customer in another EU country.

Key Changes – Summary | The changes have been introduced in response to two key areas of concern. In part the changes were aimed at modernising and simplifying the current rules relating to cross border supplies of services and also as part of the EU Anti-Tax Fraud Strategy. Amendments that took effect effect from 1 January 2010 were: **supplying goods to a VAT registered business in another EU country; transferring its own goods from the UK to another EU country; or acting as an intermediary in triangular transactions involving VAT-registered purchasers and sellers in other EC countries.**

This change is important for any international business, for advice on VAT issues please contact The Tax Department on 020 7355 3525.

UK Income Tax Mitigation

Following the 2009 budget much discussion has centered around the new 50% tax bracket due to be imposed on the 6 April 2010 for those earning over £150,000 per annum. This represents a significant increase to the top marginal rate of income tax for these individuals of 10%. This increase along with the new Non Domicile legislation brought in on the 6 April 2009 has prompted many high earners to consider relocating to more favourable tax jurisdictions. In an increasingly open world where relocation has never been easier it is easy to understand why. It is however not all doom and gloom for those high earners who have resisted the temptation to move abroad. There are various planning techniques which can be employed to mitigate the effect of the rate increase. We have provided a brief breakdown of some of the options below:

1. Change investment portfolios towards those which promote capital growth rather than income returns. The current rate of Capital Gains Tax is 18% and due to the favorable allowances available the effective rate of tax will be much lower than the rate of 50%.
2. Remuneration packages can be altered to remunerate key employees through approved share option schemes. These can be structured to avoid income tax charges and give rise only to a capital gains tax charge on disposal. The current capital gains tax charge is 18%.
3. Families should consider rearranging the ownership of their income generating assets e.g. shares in family owned companies and rental properties, so that use can be made of each members allowances and marginal rates of tax.
4. Individuals should consider cashing in deposits before 5 April 2010 so that any accrued interest is taxed at 40% rather than 50%.
5. Individuals contemplating the surrender of insurance policies should consider doing this before the 5 April 2010 whilst the tax rate is still 40%.
6. Self employed individuals should consider delaying the acquisition of trade related plant and machinery until after 5 April 2009 to take advantage of the 100% relief available on acquisitions under the Annual Investment Allowance (AIA) to reduce their trade profits.
7. Individuals considering making a charitable donation which would qualify for Gift Aid should consider delaying this until after the 5 April 2010 so that tax relief can be received at 50% rather than 40%.
8. If possible dividends should be paid to shareholders before the 5 April 2010 so that higher rate tax payers effective rate of tax on the dividends is 25% rather than 36.11% as it would be after this date.
9. Individuals disposing of shares in unquoted trading companies at a loss can elect for the capital loss to be offset against their other income in the current and previous tax years. Realising this loss after the 5 April 2010 could provide tax relief at 50% rather than 40%.

For advice please contact us – it will be a pleasure to work out what is possible.

UK VAT Rate Increase: *1st January 2010*

From 1 January 2010 the VAT rate has increased from 15% to 17.5%. The rate of VAT chargeable is determined by the time of the tax point. If a tax point for a supply is prior to the rate change, the 15% rate may be used. A tax point is created at the earlier of: **receipt of money; date invoice is issued, or delivery of goods or completion of service.** If your customers cannot recover VAT charged it will be beneficial to create a tax point prior to the rate change. So for goods to be supplied or services provided after 1 January 2010 but invoiced or collected payment before the date, the lower charge will apply. If a business makes continuous supplies of services, there are special rules for rate changes. Broadly, it may account for VAT at 15% on the part of the supply made before 1 January 2010 even when the normal tax point occurs after that date. This is optional and the normal tax point rules may be applied if preferred. There is anti-forestalling legislation for more aggressive VAT planning, but for practical purposes, this will not affect normal business transactions. Don't forget that rate change will also affect businesses which use the Road Fuel Scale Charge and those which operate the Flat Rate Scheme.

EU Push for Inheritance Rights

New rules being proposed by the European Commission will permit European citizens to choose which country's laws will govern their inheritance, allowing residents to choose between their country of residence or their nationality as a legal home for their estate.

An estimate €120bn of assets are included in wills that have an international dimension within the EU, with little clarity over which country's law should be applied. With different rules in the various nations, heirs often have to go through costly legal proceedings to settle even modest estates. This is particularly important as the Inheritance Tax laws are widely different across the EU – with France using the old Napoleonic code of directed inheritance and with the UK having a free choice determined by the Will.

Wilton can provide in depth advice in this area and would be pleased to assist with the planning for the next generation. Please ring Thomas Walford on 020 7355 3525 for advice.

Swiss Relocation

A recent trend has seen a large quantity of multinational groups relocating their European headquarters to Switzerland, for example Kraft, McDonalds, Proctor & Gamble, Colgate-Palmolive, Electronic Arts, Yahoo and Google. So what is the predominant reason for the emergence of the home of the World Trade Organisation and the Economic Forum as a base for these organizations?

Usually it is the stringent Swiss laws that protect a company's intellectual property (IP) rights that are amongst the most rigorous in the world. This obviously makes the nation an attractive option for companies wishing to preserve their IP. Also the Swiss tax law will help the affairs of the companies that are choosing to relocate. The rate of corporate tax payable by a company in Switzerland will depend on the Canton in which the company operates. As an approximate rate, 20% is not uncommon which compares favourably against the UK rate of 28%.

Company exits from the UK can be complex affairs; however large corporations are demonstrating the benefits of the stable economic environment and the comparatively less stringent tax law. Wilton are experts in this area and advice is recommended to ensure that the correct steps are taken. Please contact us and we will seek to make it a simple affair.

Location of Management Control is Important – *the Laerstate BV Case*

Corporate residence and the importance of central management and control of companies have recently been underlined by HM Revenue and Customs (HMRC) success in the Laerstate BV case. In brief Laerstate, a Dutch incorporated company, was wholly owned by a Dutch individual (Mr A), who was a director of the company throughout the relevant period. The company purchased a substantial shareholding in a UK subsidiary during the 1990's. Mr A was appointed CEO of the subsidiary and subsequently acquired the use of a property in London. Four years later Laerstate sold the shares in the subsidiary, and the HMRC contended that the gain made on the sale by Laerstate should be taxable in the UK by virtue of the influence Mr A had over both Laerstate and the subsidiary during the entire period of ownership.

The fine details of the case can be viewed on our website | **www.wiltongroup.com** | and provide some insight into how HMRC was able to achieve their success on this case. WiltonGroup can advise on ensuring that your corporate entities meet the foreign control test – for advice please speak to the Tax Department on 020 7355 3525.

New Swiss Protocol: *2009 Amendment Protocol to the 1977 Convention*

United Kingdom / Switzerland: Double Tax Agreement – the UK Government and the Swiss Federal Council have engaged in a process to conclude a Protocol in order to amend the Convention between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation. The new protocol was updated and amended on 7th September 2009. The original protocol was intended to agree a format for the Avoidance of Double Taxation with respect to Taxes on Income, signed on 8th December 1977 (Amended 1981, 1993 and 2007).

Most importantly, the Protocol addresses issues regarding the sharing and exchange of information that may prevent citizens of either country avoiding taxation obligations. The exchange of information involves the Organisation for Economic Co-operation and Development (OECD) and the international tax standards between Switzerland and the UK, which covers UK taxes of all kinds. The primary amendment to the Double Taxation Convention of 8 December 1977 is the complete exemption from tax at source on dividends paid to a company with a substantial shareholding in the company paying the dividends, or to a pension scheme. This is especially important when taken in conjunction with the New Disclosure Opportunity which has been featured separately in the previous Newsletter. Additionally, the Protocol outlines new measures on the taxation of pensions and deduction of tax on pension contributions. In future, lump sum payments from pension schemes may be taxed only by the state in which they arise. A further change states that pension contributions paid in one contracting state will under certain circumstances, be tax-deductible in the other contracting state. In accordance with Switzerland's commitments within the OECD and towards the EU member states, the Protocol extends administrative assistance to holding companies and cases of tax fraud or similar offences. Double Taxation Agreements and Arrangements aim to eliminate the double taxation of income arising in one nation and paid to residents of another. This is done via dividing the taxing rights that each territory has under its domestic law over the same income. Consequently, they benefit the taxpayer by ensuring certainty of treatment, and as far as possible by reducing compliance burdens. The UK currently has over 100 Double Taxation Agreements (DTAs) in force, and has signed nine comprehensive Tax Information Exchange Agreements (TIEAs).

UK Non Resident Landlords Scheme

It is required for all owners of property and who wish to receive gross rent to register with Her Majesty's Revenue & Customs. Although this does allow the landlord to receive the rent without any deductions – it also does mean that a Tax return needs to be submitted. Where a Landlord is not approved or who has not sought approval by the HMRC then any rents will suffer a 20% withholding tax deduction.

In order to receive approval by the HMRC the landlord will need to show: **their tax affairs are up-to-date; or that they never had any previous UK Tax Obligations; or that they are not expecting to be liable to any Tax in the UK for the year during which the application is made.**

Returns need to be submitted on 31st January each year and will then cover the year up to the 5th April of the year before. i.e. returns made by 31st January 2010 will cover the year 6th April 2008 to 5th April 2009. Any tax then due will be then payable on the 31st January of the year in question and the 31st July of the year before in two equal amounts. For the example above this will mean that tax is payable on 31st January 2009 and 31st July 2009. The tax will be assessed from a prior year. Any residual tax due is then payable on 31st January with the Return. If the Tax Return is late, a penalty fee of up to £100 or the tax due is payable. Should it remain unpaid for over 28 days a 5% surcharge is added to the tax liability. Interest also accrues on late payments at 2.5%.

Wilton & Partners operated a scheme to provide Landlords with assistance over all their legal obligations and ensure that they remain compliant with UK law. This service is very important particularly as frequently the law changes and the penalties are becoming increasingly severe. For advice please call Leanne Knox in the Tax Department on 020 7355 3525.

UK Self Assessment Tax Return Deadline: *31st January 2010*

For those that have not sent in self assessment tax returns yet, you have missed the deadline for paper submission and you must now send it online. The submission must be made by midnight on **Sunday 31 January 2010**. However this deadline is extended by 3 months following the request if it was after 31 October when HM Revenue & Customs (HMRC) asked you to complete a return.

Self-assessment tax returns are required to be completed by any business or self-employed indivdual who does not contribute taxation to the government through the PAYE system (such as those employed by a company, or paying into a pension scheme), which automatically deducts payments on behalf of employees. By completing a tax return, government can assess how much taxation you owe, or contrastingly, what kind of a rebate you can expect. Alternatively, businesses can enlist the services of a reputable accountant to do this for them, Wilton would be happy to advise and assist on any of these matters.

Despite the HMRC's enthusiasm in demonstrating the simplicity of the online system, the department has also been keen to stress that it will punish those businesses – including sole traders and partnerships – which are not punctual in the submission of their self-assessment tax returns. Consequently, for any tax returns which arrive after the January 31st deadline, HMRC will issue a £100 penalty. What is more, depending on your circumstances, they may also charge daily interest on the owed amount.

REMINDER: If you're new to online filing | If you haven't filed a Self Assessment tax return online before you must first register to use HMRC online services. You'll need to do this by 21 January 2010 to allow HMRC time to send an activation code to you so you can start using the service.

Paying your tax | Finally, you must pay any amount due for 2008-09 by 31 January 2010. This payment deadline is the same whether you've filed on paper or file online. Again, Wilton will also be very pleased to assist with any matters associated with tax returns. Please call the Tax Department on 020 7355 3525.

Summary

WiltonGroup is a discreet, independent, professional firm providing comprehensive taxation, financial and business services to our clients throughout the world. Our business is to ensure that you receive expert advice and practical support to enhance and protect your interests – from individual wealth management to complex international business structures operating across multiple taxation regimes. If you would like any further information or explanation on any topic which interests you, or you would like to arrange the opportunity of meeting to discuss tax planning opportunities in an increasingly complex tax environment please contact us.

Wilton & Partners wish all their clients a prosperous 2010

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