BUSINESS UPDATE

Spring 2013

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 the scheme 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. These shares will be exempt from capital gains tax (CGT). The employment rights given up relate to unfair dismissal, redundancy, and the right to request flexible working or time off for training. Also, 16 weeks' notice will be required when returning from maternity leave, instead of the usual eight.

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. There is nothing to stop a company including more generous employment conditions into an employee-owner contract should it wish to.

The shares for rights 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 price 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. The CGT exemption will be of little value to the average employee, because any gains would almost certainly be covered by the £10,600 annual exempt amount in any case.

As it currently stands the new contract 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. In these circumstances the CGT exemption is likely to be of real benefit given that the higher CGT rate of 28% is otherwise likely to apply to substantial disposals. The contract may therefore be attractive to start-ups, because the initial capital of the company could be spread around senior management without any future CGT implications, despite the potential for substantial gains. The planned introduction date for employee-owner contracts is April 2013.

©watcharakun

Allotts Chartered Accountants

Doncaster
Sidings Court, Lakeside
Doncaster DN4 5NU
Tel: 01302 349218
Fax: 01302 321739
Email: donc@allotts.co.uk

Directors
A E (Tony) Grice BA FCA Cert PFS
J N (Jackie) Saunders BA FCA DCha
Steven G Pepper FCA
Neil S Highfield FCA
Steven Watson BA ACA CTA

Rotherham
The Old Grammar School
13 Moorgate Road
Rotherham S60 2EN
Tel: 01709 828400
Fax: 01709 829807
Email: info@allotts.co.uk

Associate
Mark Garrison BCom FCA DCha

Financial Services
01709 828400
Email: fsd@allotts.co.uk

www.allotts.co.uk

Allotts Chartered Accountants is the trading name of Allotts Business Services Ltd. Registered in England and Wales Registered No 07453228.

Registered to carry on audit work in the UK by the Institute of Chartered Accountants in England and Wales.

In this issue: Surprises in the Autumn Statement • Are you one of the million? • More flexibility all round • Getting ready for Real Time Information • Cut your corporation tax • HMRC set to name and shame tax defaulters

This newsletter is for general information only and is not intended to be advice to any specific person. You are recommended to seek competent professional advice before taking or refraining from taking any action on the basis of the contents of this publication. The newsletter represents our understanding of law and HM Revenue & Customs practice as at January 2013.

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 took effect from 1 January 2013. 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. The new limit will last for two years, after which it will return to £25,000.

A wide range of expenditure qualifies for AIA, including most plant and machinery and some fixtures and integral features of buildings. 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.

Other business-friendly measures in the Autumn Statement include 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

©James Steidl

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 end of an attempt to require senior people integral to running a business to have their 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. The Government will instead continue strengthening its approach to policing the existing IR35 rules.

The draft 2013 Finance Bill, published on 11 December 2012, was also a boost to the enterprise management incentive (EMI) share option scheme. From April 2013 employees exercising EMI options will qualify for the 10% entrepreneurs' relief rate of capital gains tax without having to hold 5% of the company's shares. In addition, the one-year qualifying period will start on the date the option is granted rather than when the shares are purchased.

Did you know that HMRC has updated its advisory fuel rates for use where an employee drives a company car for business travel? The rates for petrol and diesel are unchanged, with the liquid petroleum gas (LPG) rates going up by 1p a mile – these are now 11p (1400cc or less), 13p (1401cc to 2000cc) and 18p (over 2000cc). The rates can also be used where an employee reimburses the cost of fuel used for private travel in order to avoid a fuel benefit charge, and they will be accepted for VAT purposes provided VAT receipts are retained. The next review is on 1 February 2013.

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%.

If your income exceeds £60,000, you may decide 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.

Did you know that the latest version of VAT Notice 733 covering the flat rate scheme has been published, with some minor amendments? A business can now use the scheme where its annual sales are below £150,000, and this will mean that many businesses will pay less VAT. The scheme also saves businesses time by reducing the administrative burden; VAT is a simple fixed percentage of sales and the percentage varies according to business sector. The scheme is not for everyone; it is particularly unsuitable for a business that incurs a lot of input VAT. Please contact us for advice.

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.

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.

©Getty Images

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.

Getting a tax deduction for sponsorship costs is not always straightforward – as a Plymouth-based fish merchants recently discovered. Many businesses sponsor local clubs and organisations; however a supplementary tribunal hearing in the long-running case of *Interfish Ltd v HMRC* provides a warning that sponsorship payments may not be deductible for corporation tax purposes. Interfish had donated over £1 million to its local rugby club, but a deduction Interfish tried to make from its corporation tax was denied on the grounds of 'duality of purpose' – the sponsorship also improved the club's fortunes. It is worth noting that Interfish's case was not helped by the fact that its managing director was involved with the club.

Cut your corporation tax

A new regime aims to give companies an incentive to protect and commercialise their patents.

The 'patent box regime' was initially proposed in 2010 and will be introduced from 1 April 2013. Companies can make an election so that any of their profits that are attributable to patents are taxed at an effective corporation tax rate of just 10%, and it will not matter whether these profits are specifically received as royalty payments or are embedded in a product's selling price.

Only 60% of the benefit will be given in 2013, however, because the 10% rate is being phased in.

The fully reduced 10% rate will apply from 2017. This will be in addition to tax relief that may be available for research and development expenditure.

The patent box will be limited to companies involved in the innovation lying behind a patent, so a company claiming the patent box must show that it has carried out development activities in relation to the invention. The UK Intellectual Property Office or the European Patent Office must have granted the patent. So now is a good time to review your patent arrangements to ensure that you benefit fully from the new regime.

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 it gives this, HMRC will not publish any details of the taxpayer.

Once the compliance check is complete, HMRC will decide whether or not to publish details. Taxpayers will have the opportunity to make representations about why their details should not be published, although HMRC said that details will be withheld from publication only in exceptional circumstances. HMRC will publish details on its website, where they will remain for up to 12 months. It 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.