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Briefing document

Year-end housekeeping for 5 April 2021

Introduction

With the end of the current tax year (5 April 2021) fast approaching, we have outlined below some of the main things that individuals, entrepreneurs and their families should look at ahead of the tax year end, to ensure that their personal tax affairs are in good order and all available tax allowances and exemptions are utilised.

Income tax

Individuals with total income in excess of £150,000 pay the additional rate of income tax, currently 45%, (46% in Scotland) although certain individuals with income between £100,000 and £125,000 (in 2020/21) are subject to an effective 60% tax rate (61.5% in Scotland) owing to the tapered removal of the personal allowance. Some options for consideration are outlined below; please contact us if you require assistance in this area.

Transferring assets to spouse or civil partner

If your spouse or civil partner does not have sufficient income to utilise their personal allowance (£12,500 for 2020/21) or their nil, basic or higher rate tax bands, it may be sensible for you to gift sufficient income-producing assets to them to enable them to do so.

Calculating the effect of the transfer of income producing assets can be complex, due to the interaction of the savings rate of tax, the savings and dividend nil rate bands and the withdrawal of the personal allowance from those with income of over £100,000. Furthermore, different tax rates apply to non-savings income of Scottish resident taxpayers, which would also need to be taken into account if relevant. The wider implications of making gifts to your spouse or civil partner must also be considered.

Preserving your personal allowance

Where your income is between £100,000 and £125,000 (for 2020/21), your personal allowance is phased out, resulting in an effective rate of tax of up to 60% (61.5% for Scottish residents) within this income bracket. Taxable income can be reduced through pension contributions (subject to restrictions set out later in this note) and charitable donations. The wider implications of making such contributions and donations should be considered.

Charitable donations

Tax relief is available for cash gifts to UK registered charities, and certain charitable organisations in the EU, Norway, Iceland and Liechtenstein, although non-UK charitable organisations have to satisfy certain conditions.

If a 45% taxpayer makes a cash donation to a charity of £20,000 under the 'Gift Aid' scheme, the charity may reclaim £5,000 from HM Revenue & Customs (HMRC) and the donor will obtain tax relief of £6,250 via their tax return. The overall effect is that the charity receives a £25,000 donation at a net cost to the donor of £13,750.

Tax relief may be available for certain charitable donations not made in cash form, but you should review this with your usual Deloitte contact to ensure that any tax relief is claimed appropriately.

Are your investments held in a sensible structure?

You need to think about the effect of corporation, income and Capital Gains Tax (CGT) rates on the way you own investments:

- The corporation tax rate tax is 19%.
- The top rate of income tax is 45% for most income (46% in Scotland), and 38.1% for dividends after the £2,000 dividend nil rate band.
- The top rate of CGT, after the annual exemption of £12,300 for 2020/21, is 20% on most assets, and 28% on residential property and carried interest. Anti-avoidance rules may apply in some circumstances that can result in an income tax charge arising instead of CGT, including in particular where distributions are received on the winding up of a close company and the shareholder is in some way involved in the same or a similar trade or activity following the liquidation.

With this in mind, you should review how your investments are currently structured, taking into account the overall net effective rates of tax on investment returns, now and in the future.

When choosing the right investment vehicle, there are a number of tax and wider considerations that need to be taken into account. Similar issues apply if you are self-employed in respect of self-employment income. The most appropriate vehicle will be largely driven by your circumstances and intentions, and so the position should be reviewed with your usual Deloitte contact.

IR35

The extension of IR35 to the private sector was delayed last year but is now due to take effect from 6 April 2021. The new rules will affect situations where individuals provide their personal services to end users via a Personal Service Company (PSC) or a similar intermediary.

In such circumstances, unless the end user is 'small', the end user will have to determine whether the relationship between the worker and end client would be an employment if the worker was directly engaged. If so, the engager (usually the end user) has to issue the contractor with a 'status determination statement', and the entity paying the PSC will have to operate PAYE and so withhold income tax and national insurance on payments made to the PSC. The rules are complex, and are likely to make engaging through a personal service company less attractive in many circumstances. Individuals currently suppling their services through their own PSC may wish to review existing contracts and arrangements as necessary.

Pensions

Fully utilising annual pension contributions

The amount of tax-deductible pension savings that can be made for each individual is limited to the "annual allowance". The standard annual allowance has been £40,000 since 6 April 2014. From 2016/17 to 2019/20, the allowance was reduced by £1 for every additional £2 of income between £150,000 and £210,000, resulting in an annual allowance of £10,000 for those earning £210,000 or more. With effect from 6 April 2020 the income threshold at which the annual allowance begins to be tapered was raised to £240,000 and the minimum annual allowance was reduced to £4,000. Income for this purpose is taxable income plus most pension savings by the individual and/or their employer.

Where pension savings for the last three years have been lower than the annual allowance for the relevant year, there may be scope for catching up on pension savings in the current year. For example in 2020/21 unused allowances from 2017/18 onwards could be used. The allowances will be available if the individual was a member of a UK registered scheme in the relevant tax year (this may in some circumstances be extended to membership of overseas pension schemes). In some cases, contributions of up to £160,000 could attract tax relief in 2020/21, but the rules surrounding this are complex. You should review the position with your usual Deloitte contact and take financial advice from a FCA regulated pensions adviser before making any contributions. A separate briefing note is available on request.

Lifetime allowance protections

In addition to the complexities surrounding pension contributions, the "lifetime allowance" (i.e. the total savings that can be accumulated in registered pensions without incurring a tax charge) will need to be considered. The lifetime allowance is currently £1,073,100 for 2020/21. The amount for 2021/22 has yet to be announced, but without any specific announcements in the Budget will increase by CPI, i.e. 0.5%. If savings are over the lifetime allowance and there is a tax charge, this charge normally arises at the point that benefits are drawn from a scheme, or on the individual's 75th birthday, if later. The excess over the lifetime allowance is taxed at 55% if it is taken as a lump sum, or 25% if it is taken as pension. Following reductions in the lifetime allowance over recent years, some protections are available allowing larger sums in some circumstances.

Capital Gains Tax (CGT)

Claiming tax relief for capital losses

Capital losses must be claimed within four years of the end of the tax year in which the loss is realised. For example capital losses realised in 2016/17 must be claimed by 5 April 2021. This would generally be done as part of your tax return, but it is important to consider whether or not you may have losses to claim that have not been claimed previously (this is particularly relevant to non-UK domiciled individuals). In addition, it may be possible to claim a capital loss if you hold assets or investments which have fallen in value and are now worthless, or if you have previously made loans to a trading company (or other trader) which have become irrecoverable. For loans made before 24 January 2019, relief on irrecoverable loans is only available if the borrower is UK resident.

Where a capital loss relates to shares in an unquoted trading company, it may be possible to offset the loss against income which would otherwise be taxable at up to 45% income tax (or 46% for Scottish residents). The loss that can be offset in this way is typically capped at the higher of £50,000 or 25% adjusted total income.

The conditions to claim a loss and the claim itself can be complicated and so you should discuss this with your usual Deloitte contact.

Business Asset Disposal Relief (BADR).

The CGT rate for higher and additional rate taxpayers is 20% for assets other than residential property and carried interest where the rate is 28%. However, a 10% CGT rate can apply to qualifying capital gains, up to a lifetime limit, if BADR (previously called entrepreneurs' relief) is available. The lifetime limit has been £1million since 11 March 2020. The maximum tax saving is therefore normally £100,000.

If you expect to sell a business asset or shares or loan notes in a trading company, you should review your personal tax position as soon as possible to determine whether BADR, and therefore the 10% CGT rate is available. In order to claim BADR on shares a number of conditions need to be met (very broadly you must have at least a 5% holding of the ordinary share capital in a trading company and hold an employment or office in the company) for a period of at least 24 months leading up to a disposal. BADR can also apply to sales of unincorporated trading businesses and furnished holiday lets. The detailed conditions are complex and should be reviewed carefully.

Investors' relief

Similarly to BADR, investors' relief results in a 10% CGT rate. Relief is available on up to £10 million of qualifying gains over an individual's lifetime. Individuals who subscribe for ordinary shares in an unlisted trading company, in cash, on or after 17 March 2016 may be eligible to claim investors' relief on disposals from 6 April 2019 where shares have been held for at least three years. It is important to be aware of the conditions and the holding period so that relief can be claimed on disposals where appropriate. Very broadly, newly issued ordinary shares in unquoted trading companies must be held and the individual must not be an employee or paid director, although again the detailed conditions are complex and should be reviewed carefully.

Use your CGT annual exemption

Each UK individual has an annual exemption of £12,300 (for 2020/21). If you do not use your annual exemption it cannot be carried forward and is lost. Consideration could be given to selling assets to realise gains if this is consistent with the overall investment strategy. However, anti-avoidance rules mean that if shares and securities are sold and repurchased on the same day, or within the following 30 days, the disposal will be matched with the later acquisition when the gain is calculated.

Gift to spouse or civil partner prior to a disposal

Is your spouse or civil partner a lower rate taxpayer? You may normally gift an asset to your spouse or civil partner free of tax. If your spouse or civil partner were to then sell the asset, the resulting gain may be covered by their CGT annual exemption or their capital losses, and/or attract a 10% or 18% CGT rate, instead of 20% or 28%, depending on the nature of the asset. In order for this to be effective, any gift of assets must be absolute and unconditional and any practical considerations should be taken into account. Other tax implications should be considered, including the anti-avoidance provisions which could restrict the offset of losses. If your spouse or civil partner is non-UK domiciled, the inheritance tax implications of any gift should be considered (see below).

Main residence relief

Normally where a property is used as the owner's only or main residence throughout the ownership period, any gain on disposal is exempt from CGT. Married couples and civil partners can only have one main residence between them. If more than one property is used as a residence by an individual or couple, it is possible to elect which one should be treated as the main residence for CGT purposes. This election must be made within two years of the residences available to an individual changing (e.g. within two years of a new property being acquired).

It should be noted that rental properties on which a capital gain is unlikely to arise may constitute a "residence" for the tenant. This should be borne in mind when considering whether or not a main residence election is appropriate.

Since 6 April 2015 additional rules have applied if the property is located in a different jurisdiction from the one in which the taxpayer resides. Broadly, taxpayers must occupy the elected property as a residence for at least 90 days in the tax year in order for it to qualify for relief in respect of that year. These rules are complex and those in this situation should take professional advice at the earliest opportunity.

UK residential property disposals – standalone tax return requirement

UK residents who realise a taxable gain on disposal of UK residential property are generally required to file a standalone CGT return and make a payment on account of the CGT due within 30 days of completion. The payment on account will normally be the full expected CGT liability, but may exceed it in some cases as only losses incurred up to the date of disposal of the property can be offset against the gain arising when the standalone return is filed.

Losses incurred after the date of completion must be ignored in determining the CGT payment on account, even if they will ultimately be offset on the self-assessment tax return for the tax year of disposal. Any excess CGT will generally be repayable when the self-assessment tax return is filed. Interest and penalties may apply if returns are not submitted and/or insufficient payments are made. A separate briefing note is available at https://deloi.tt/CGT2020.

Non-Resident Capital Gains Tax (NRCGT)

Any gains realised by non-UK resident individuals and trustees who dispose of UK residential and/or non-residential property (including that held indirectly) are within the scope of CGT (non-resident companies are within the corporation tax regime). Rebasing to 5 April 2015 or 2019 values (depending on the type of property being disposed of) may apply. Each disposal must be reported on a standalone CGT return within 30 days of the date of completion, irrespective of whether there is a taxable gain. In addition, any CGT due will normally need to be paid within the same 30 day time period.

Using current year exemptions and allowances

Individuals are entitled to exemptions and allowances each tax year. The main exemptions and allowances not already mentioned in this briefing note are:

Inheritance Tax annual exemption of £3,000 per annum

This is the amount individuals can give away each tax year without any IHT implications. If the previous tax year's (2019/20) £3,000 annual exemption was unused, £6,000 can be given away tax-free in 2020/21. Other reliefs and exemptions may also be relevant.

Stakeholder pensions of £3,600 per annum (gross)

Any UK resident individual under the age of 75 can contribute up to £2,880 (net) into a stakeholder pension each year, irrespective of their earnings or whether or not they are employed, so these pensions can be funded for non-working spouses and children. The pension provider will reclaim 20% tax relief direct from HMRC, so the policy will be credited with a gross contribution of £3,600. It is important to note that the funds will not be accessible until the minimum pension age. This is currently 55. The government have however confirmed that they intend to increase the minimum pension age to 57 in 2028.

Individual Savings Accounts (ISAs)

The annual overall subscription limit for an ISA for 2020/21 remains at £20,000, which can be invested in cash, UK stocks and shares, foreign shares, corporate bonds and other permitted investments. ISAs are available to UK resident individuals aged 18 or over (age 16 or over for cash ISAs). The investment return from ISAs is free from income tax and CGT.

Other types of ISA exist, including the Innovative Finance ISA, and the Lifetime ISA. The annual investment limit applies across all ISAs in total. It is important to be aware of the conditions and features of the various ISAs before investment to ensure that the appropriate ISA vehicle is used for your specific circumstances. A comparison with saving into a pension is also important. Regulated financial advice may be required.

Junior ISAs

Junior ISAs are available to children under the age of 18 who are UK resident and who do not have a child trust fund. The annual subscription limit in 2020/21 is £9,000, which can be split between stocks and shares and/or cash. The funds are locked in until the child is 18, when the account will default to a normal ISA if the funds are not withdrawn. Ordinarily, when a parent gives money to a child, if the income arising from the gift exceeds £100, the whole of the income is taxable on the parent (while the child is under 18). This provision does not apply to a Junior ISA.

Tax efficient investments

There are a number of statutorily provided tax efficient investments available, including National Savings (www.nsandi.com), the Enterprise Investment Scheme (EIS), Seed Enterprise Investment Scheme (SEIS), Social Investment Tax Relief (SITR), and Venture Capital Trusts (VCTs).

EIS, SEIS, SITR and VCT investments all have annual limits, as follows:

- EIS - £1,000,000 with income tax relief of 30%, or up to £2,000,000 provided the additional £1,000,000 is invested in 'knowledge-intensive' companies
- SEIS - £100,000 with income tax relief of 50% (see below for more detail)
- SITR - £1,000,000 with income tax relief of 30%. This relief is only available on investments made up to 5 April 2021 as the relief is due to end on 6 April 2021.

- VCT - £200,000 with income tax relief of 30%

Any gains realised on disposal of shares in the above four tax-efficient investments - and loans in the case of SITR - may be exempt from CGT. In addition, it may be possible to defer gains on disposal of other assets into EIS or (for gains made before 6 April 2021 only) SITR investments. For certain SEIS investments, part of the gain on the disposal of other assets can be exempted from CGT rather than deferred.

The tax rules relating to these investments are complicated and it is important to take professional advice. Regulated financial advice may also be required.

Non-UK domiciled individuals

Deemed UK Domicile (DD)

Certain individuals who are legally non-UK domiciled are deemed to be UK domiciled (DD) for income tax, CGT and IHT purposes. The effect of this is that the remittance basis of taxation is normally unavailable, and the individual's worldwide estate is within the scope of IHT. It is important to take advice before becoming DD. There are two key situations in which individuals become DD:

1. Long-term UK residents become DD once they have been UK resident in 15 of the preceding 20 tax years. Individuals who have been continuously UK resident since the 2006/07 tax year will therefore become DD on 6 April 2021. Individuals who first commenced UK residence before 2006/07 may also become DD on 6 April 2021, depending on their pattern of UK and non-UK residence.
2. Formerly domiciled residents are UK resident individuals who were both born in the UK and who had a UK domicile at birth. Formerly domiciled residents are DD for income tax and CGT purposes whenever they are UK resident. DD for IHT only applies if the individual is UK resident in a given tax year and was UK tax resident in one of the two previous tax years. This means that formerly domiciled residents who commenced UK residence in the 2020/21 tax year will become DD for IHT purposes on 6 April 2021, assuming they are also UK resident in 2021/22.

The remittance basis remains automatically available to DD individuals who are legally non-UK domiciled with less than £2,000 of unremitted foreign income and gains in a given tax year. It is possible to opt out of the remittance basis, if preferred.

Significant changes to the taxation of trusts established by non-UK domiciled individuals have been made in recent years, which are relevant to all individuals who are legally non-UK domiciled, whether or not the individual in question is DD. Please contact your Deloitte contact for advice on this matter as appropriate.

Losses

Non-UK domiciled individuals who are DD or who have never claimed the remittance basis are eligible to claim relief for foreign losses in the same way as UK domiciled individuals (as set out above). Individuals who have claimed the remittance basis and who are not DD must make an election (a Section 16ZA election) in order to be able to do so. Section 16ZA elections must be made within four tax years of the first year after 2007/08 in which the remittance basis is claimed. This means that those who first claimed the remittance basis in 2016/17 must make the election by 5 April 2021 if they wish to do so. The wider implications of making such an election should be considered, and it may not be appropriate to do so in all cases.

If an election is or has been made, potential foreign loss claims for earlier years should be considered. This may be relevant where losses were not computed when they made, or where the Section 16ZA election is made some years after the remittance basis was first claimed. Losses must be claimed within four years of the end of the relevant tax year, so losses relating to 2016/17 must be claimed by 5 April 2021.

Inheritance Tax (IHT)

In general, 40% IHT is payable on the value of the estate on death, subject to any exemptions available. Lifetime planning can also reduce the overall IHT suffered. The use of the annual £3,000 exemption for IHT is dealt with above. In addition, gifts made out of income on a regular basis can also be made without any IHT implications. It is important to ensure that gifts are made as part of a normal pattern of expenditure and that the donor retains sufficient income to maintain his or her normal standard of living after the gift. It is recommended that the intention to make regular gifts out of income is documented from the outset of the arrangements and that appropriate records are maintained.

On a more general level, it is important to review any lifetime planning and your will at regular intervals to ensure that they continue to meet your objectives for succession and are appropriate in the light of current legislation, for example changes in pensions rules which affect the tax position when pension death benefits are passed to successive generations, the effect of the residence nil rate band, the reduced IHT rate if 10% of the net estate is left to charity etc. You should also ensure that the conditions for any available exemptions (for example business property relief on unquoted shares) are met. Particular rules apply to couples where one spouse or civil partner is UK domiciled and one is not. The detailed IHT rules are beyond the scope of this note, but should you require assistance in this area please speak to your usual Deloitte contact.

Tax administration

Keep adequate records

It is important to be able to substantiate tax return entries with underlying records, particularly in the event of an enquiry. Depending on the source of income or gains, there is a requirement to retain the underlying records for up to 5 years from the 31 January following the year of assessment. Following the introduction of the Common Reporting Standard, HMRC now receive taxpayer information directly from other jurisdictions, and enquiries may increase as a result. Furthermore, the time limit for HMRC to raise assessments relating to offshore matters has increased from 4 to 12 years (if reasonable care was taken) and from 6 to 12 years in cases of careless error. The increased periods apply to tax years from 2013/14 onwards in cases of careless error, and 2015/16 where reasonable care was taken. The time limit for cases where deliberate errors were made remains at 20 years.

Common Reporting Standard and trusts

The Common Reporting Standard (CRS) requires Financial Institutions (as defined) to report financial account information relating to residents of participating jurisdictions so that this can be exchanged between the relevant jurisdictions. Professionally managed trusts which derive income primarily from financial assets are likely to come within the definition of Financial Institution. UK resident trusts which are Financial Institutions will need to review their Account Holders (mainly the settlor and beneficiaries of the trust) and report the necessary information to HMRC by 31 May 2021 (see here). Such trusts will also need to consider whether they have any reporting responsibilities under US FATCA. A separate briefing note is available on request.

Time limits

A number of claims and elections relating to the 2016/17 tax year have a time limit of 5 April 2021, and so need to be considered before that date. Further to the points included above, relief for tax overpaid in 2016/17 must be claimed by 5 April 2021. The most likely scenario in which this could occur is for those taxed under PAYE, where the PAYE deductions are excessive, although overpayments could arise in other cases.

Find out more……

This note reflects the law in force as at 14 January 2021. Please be aware that this note does not cover all aspects of this subject. To find out more about any aspect of the above, please discuss with your usual Deloitte contact. If you do not have a usual contact, please contact Michelle Robinson (michellerobinson@deloitte.co.uk). For further information visit our website at www.deloitte.co.uk