



NIXON WILLIAMS

NEWSLETTER

WINTER 2009

READY STEADY VAT

First quarter

1 January 2010 heralds the restoration of 17.5% as the standard rate of VAT, the effect of which is covered on the back cover of this newsletter. It is also the start date for the package of cross border VAT changes announced initially at Budget 2009 and now in Finance Act 2009.

For any business involved in providing or purchasing international services, a review of the impact of these changes on their VAT accounting is essential. The key areas of change include:

- the place of supply of services rules
- the time of supply of services rules
- the reporting requirements and deadlines for EC sales lists
- VAT refund procedures where VAT is paid in another EU member state.

Second quarter

For VAT accounting periods commencing 1 April 2010, returns will have to be filed online where annual turnover (exclusive of VAT) exceeds £100,000. Electronic payment will also be required. The online filing requirement will also apply to all newly registered businesses from that date.

This is subject to HMRC's own caveat that 'all necessary regulations are passed' in time. All affected businesses should receive correspondence advising of the changes early in 2010.

TAKE CARE IN PLANNING TO AVOID THE 50% RATE

It is now well known that an additional rate of tax of 50% is to be introduced from 6 April 2010 for individuals whose taxable income exceeds £150,000. Individuals affected by this will no doubt be looking for ways to reduce their tax liability.

One route which will certainly be examined will be to try to establish that a transaction falls within the capital gains tax (CGT) rules and is therefore taxable at only 18%. The gap of 32% is a very tempting one to consider but be aware that HMRC have a strong incentive to move the other way and may seek to turn 18% into 50%.

Where share transactions take place, there is some complex anti-avoidance legislation that can turn a capital gain into an income tax charge which has been in place for many years. This can apply where HMRC can show that the arrangements were not done for commercial reasons and were done for the purpose of avoiding tax. For example, a higher rate tax individual who owns two companies A and B sells some of the shares in company A to company B for cash. This may trigger the rules because all that is effectively happening is that cash is being extracted from company B's distributable profits to the shareholder and so what appears to be a capital gains tax transaction is, in substance, a dividend.

Land transactions can also be an area of contention. Suppose instead of buying land in their own name an individual uses a company to buy the land and develop the site. Then instead of selling the development in the company, they sell the shares in the company (the purchaser may also find this

attractive for stamp duty land tax purposes). They think they have made a capital gain on the shares but HMRC have legislation which they can use to argue that this should be treated as an income tax liability because if the land had been sold, there would have been a revenue profit.

Where a land transaction is carried out directly by an individual, that individual may want to argue that it is a capital transaction. However, the definition of a trade for income tax purposes includes what is known as 'an adventure in the nature of trade' and there is a substantial body of case law which has established the characteristics of such an adventure which may lead to an income tax charge.

If you are planning significant one-off transactions you need to take advice before you start to ensure that these potential problem areas can be avoided, so do contact us.



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CIMA

A TIME FOR GIVING

So you want to give your employees a reward for their hard work this past, possibly difficult, year. Perhaps you were thinking of a party or a gift to say thank you - but are there any tax implications for them and is it all tax deductible for the business?

The staff party

This is not classed as business entertainment as long as it is exclusively for employees and their partners. This means from the business perspective the costs are deductible for income tax (IT) or corporation tax (CT) and any VAT element is recoverable.

Be careful of situations where the business incurs costs for a mixed event for the benefit of staff and customers or suppliers, as the entertaining portion may be disallowed for IT and CT and part of the VAT may be non recoverable. In cases where clear records cannot distinguish between staff and others there is a risk of the whole amount being disallowed!

For the staff there is no taxable benefit of being provided with parties or events over the course of a tax year, provided that the overall cost to the employer does not exceed £150 (VAT inclusive) per attendee, in the tax year. Where there is an event which trips over this limit then a taxable benefit does arise.

A thank you gift

Gifts to staff are also normally a fully deductible cost for the business and VAT is recoverable. It is non-staff gifts which are usually restricted in form and amount to retain tax deductions.

HMRC generally allow an employer to give minor gifts to their employees without having to report this as a perk of the employee's job through the benefits system; for example, some flowers when an employee gets married. This may even apply where all employees receive a gift (for example chocolate), provided it is trivial and not something which can be turned into or used as money. In circumstances where an employer does need to report gifts, which are not trivial, a form P11D is used.

Using form P11D will mean that the employees will end up paying tax on the value of the gift. This may not be the best way of dealing with this issue as the tax charge may leave a nasty taste (unlike the chocolate!)

Alternatively the employer can pay the tax on the gift using a PAYE settlement agreement. Do get in touch if you would like to know more about this area.



TAX RETURNS

The deadline for submitting paper tax returns has now gone, however your tax return can still be filed online. Provided it is filed by 31st January 2010, no penalties will be incurred.

Here at Nixon Williams, we can prepare and submit your tax return for you, however in order that we can meet the HMRC filing deadline, we must receive your instructions by Monday 4th January 2010.

REFERRALS

Spread the word...

Tell a friend about Nixon Williams' great service and if they become a client we will send you £75

- 5 new clients - an extra £50 bonus
- 10 new clients - an extra £100 bonus
- 15 new clients - an extra £150 bonus
- 20 new clients - an extra £200 bonus
- 25 new clients - an extra £250 bonus

So if you recommend 25 new clients in 12 months, you will receive a total of £2625!

You can refer someone via our website or email adele@nixonwilliams.com

Conditions:

1. The 12 month period will commence with the first referral received after 01/12/09.
2. The referral fees are paid when the client has started paying their regular fees by standing order or direct debit.
3. Your details must be either detailed on the new client's application form or been referred by you prior to them becoming a client.

LOOKING FORWARD

The new-year is likely to bring new challenges when trying to maximise your net income. We already know that 2010 will herald the new top rate of income tax at 50%, although this will only hit incomes in excess of £150,000.

Lower incomes will be hit by the gradual withdrawal of the Personal Allowance starting when income hits £100,000 and fully withdrawn when it reaches £112,950.

With taxes likely to rise after the general election, the current tax year may prove to be the time to withdraw as much income as you can.

Whilst it is impossible to state categorically that this will save money, the writing on the wall indicates that savings could be made. Some of the warning signs are:

1. Could we see an extra tax on dividends for 2010/11? This could be an "easy" tax to increase.
2. The difference of tax rates between capital gains tax at 18% and higher rate tax at 50% could be closed?
3. Making use of Entrepreneur's Relief, an effective rate of 10% could be stopped?
4. Capital Gains annual exempt allowance of £10,100 (2009/10) could be cut or even scrapped?

Unfortunately, nothing is certain and a fast changing tax regime makes even medium term tax planning very difficult. Now could be a good time to review your medium term tax plans, be careful of expecting the current tax rates and schemes to be there when you plan on using them!



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- Annual P11d preparation from your records
- Prepare Annual Accounts and any Annual Returns
- Prepare business tax returns
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- NO spreadsheets to complete!
- Direct telephone number of your Account Controller

PAINFUL EXTRactions

Over recent years, HMRC have become increasingly interested in the company law elements of dividends. This is mainly due to the fact that running a business through a company and taking the profit as dividends can create substantial savings. Even with the proposed changes to the tax system from next year, including the 50% additional income tax rate and a corporation tax rate of 22% for small companies, there are still savings to be made.

However, if HMRC can show that the dividends are unlawful from a company law perspective at the time of payment, then they could argue that the money extracted was not a dividend but a loan. Some companies are clearly at risk where currently they are not creating the same level of profits as in recent years and yet continue to extract regular dividends.

For many owner managers, this would leave the company with a corporation tax bill of 25% of the amount taken as well as a taxable benefit for the individual for the use of the monies and Class 1A NIC for the employer.

It just goes to show how important it is for companies to ensure they have enough reserves at the time dividends are paid.

HMRC are clearly interested in this area, so remember, do not just withdraw funds from the company account, you should only be withdrawing funds to cover salary, expenses and dividend payments, if in doubt contact your Account Controller.



CHRISTMAS & NEW YEAR OPENING

The office will close at 5pm on Wednesday 23rd December 2009 and re-open at 9am on Monday 4th January 2010.

All the team at Nixon Williams would like to send our good wishes to all our clients for the festive season.



AND FINALLY...

This is my regular spot where I will deal with a question from a client.

My father has been nagging me to start saving for my retirement, what options are available to me?

I do not have sufficient space to fully deal with this question, however retirement planning usually involves contributions to a pension scheme, mainly for the tax advantages.

If, after receiving appropriate advice, you decide to start making pension contributions your choice will probably be to make personal contributions or contributions from your company.

Personal Contributions

Since 6th April 2006 personal pension schemes are limited by an annual allowance of £245,000 and the lifetime allowance, set at £1.75m in 2009/10. I will assume that these limits are not going to be an issue!

The amount of gross contributions qualifying for tax relief is also limited to the greater of:

- a) £3,600, or
- b) The taxpayer's total 'earnings' for the tax year.

Unfortunately, 'earnings' for this purpose include only employment income, dividend income is excluded.

These contributions will need to be declared on your personal tax return each year.

Company Contributions

As part of your remuneration package, you could decide, in addition to a salary that you take from your company, that your company could make contributions to a pension scheme.

HMRC have stated that they will not challenge an overall remuneration package and its split between salary and pension contributions. Provided the overall contributions do not exceed the annual allowance of £245,000 – there should not be an issue with making company contributions in excess of the salary paid.

Retirement planning can be a complex area and specialist advice is highly recommended. At Nixon Williams, we have built up a special relationship with one of the leading Wealth Managers, St. James's Place Wealth Management, a FTSE 250 company with over 80,000 wealth management clients.

One of the benefits of our special relationship with St. James's Place is that one of their partners will be happy to visit you at home, and discuss your wealth management needs, wherever you are in the UK.

If you would like us to arrange an advisor to contact you, please contact your Account Controller to arrange this.

I hope this helps.
Alan Williams



ARE YOU READY FOR THE RATE CHANGE?

1 January 2010 sees the reintroduction of the standard rate of VAT at 17.5%. For sales of standard-rated goods or services that take place on or after 1 January 2010 businesses should charge VAT at the new rate of 17.5%. This means that businesses currently calculating their VAT using the VAT inclusive fraction of 3/23 should use the new fraction of 7/47.

Special rules for sales of goods that span the change in rate

However, there are optional change of rate rules that you may be interested in applying. You can apply the rules selectively to different customers.

So, for example, if you issue a VAT invoice after 1 January 2010, for goods you provided, or services that you completed before 1 January 2010, you can, if you wish, apply the 15% rate.

You can decide to apply these rules even after you have issued a VAT invoice showing 17.5% VAT. If you do, you must issue a special credit note giving credit for the extra 2.5% VAT, within 45 days of the rate change (i.e. by 14 February 2010). You should not cancel the original invoice.

Example

One computer is delivered to a VAT registered business customer and one to a non business customer on 22 December 2009 when the VAT rate is 15%. The business customer is fully taxable. On 2 January 2010 the VAT invoices in respect of the two sales will be issued. What rate of VAT applies?

Under the normal taxpoint rules, 17.5% VAT is due as the invoice was issued after the increase in the rate and within 14 days

of the supply of the computer. However, under the special rules you may decide to charge the 15% standard rate of VAT which was in effect when the computer was delivered. This will reduce the amount of VAT you are liable to account for on the sale.

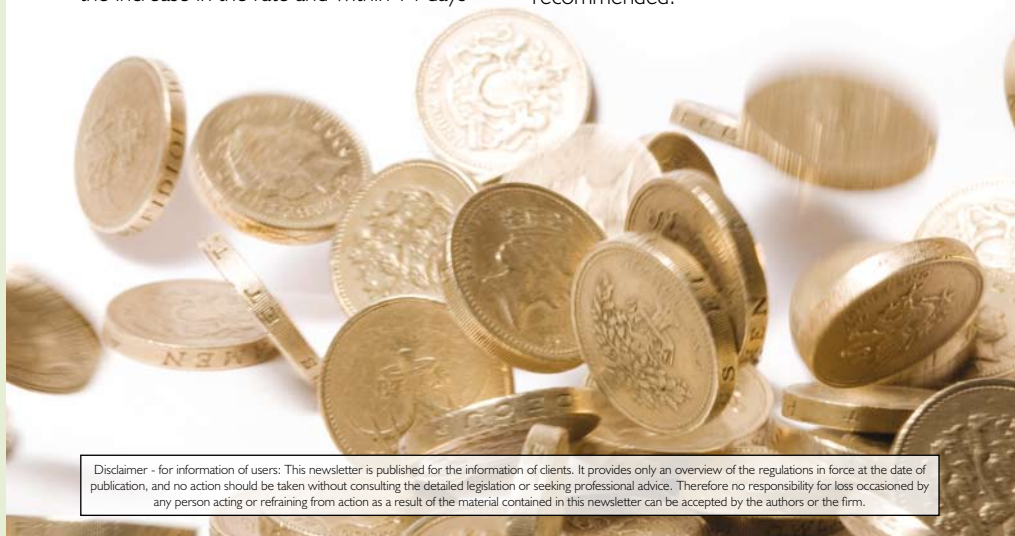
Your VAT registered customer is able to recover the VAT charged in full so the use of the special rules will not save them any tax. In this situation it may be easier just to charge the full 17.5%. However for the non business consumer they will probably be expecting to only be charged 15% VAT so you have the facility to apply only 15% and keep them happy.

Supplies of services that are in progress on 1 January 2010

It will also happen that a service commences before 1 January 2010 and is still in progress after that date. The normal rule is that where an invoice is issued or a payment received after 1 January 2010 VAT is due at 17.5% even if part of the supply was undertaken before that date. However, special rules also apply here both in relation to continuous supplies of services (such as leasing of equipment) and to single supplies of services (such as a lawyer preparing a will), carried out over a period of time. Please contact us for more information if this affects you.

Payments in advance of 1 January 2010

Where payment is received before 1 January 2010 for goods and services also supplied before that date then the old 15% charge clearly applies. However where goods or services are not supplied until on or after that date then special anti avoidance rules may apply to prevent artificial VAT savings and obtaining advice is recommended.



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