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newsletter

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Landfill brings new tax risk

Landfill Tax may not seem one to watch for every business: but key developments since 1 April 2018 mean waste disposal at unauthorised waste sites may now be taxable and any business allowing taxable waste to be disposed of at an unauthorised waste site is potentially in scope. These new rules come on top of the responsibilities which every business already has as a waste producer.

Unauthorised sites are those operating without the necessary Environment Agency or Northern Ireland Environment Agency permits, and the new guidance explains that 'the person who actually makes the disposal, or any person who knowingly causes or knowingly facilitates the disposal,' could be held jointly and severally liable for the tax. The new rules thus affect not just the waste producing business, but its company officers, such as directors - as well as hauliers, waste brokers, or the owner of land on which disposal is made.

Tax and penalties of up to nearly £180 per tonne can be charged on unauthorised disposals, retrospectively in some cases. Every business will need ongoing care and due diligence checks in future. HMRC guidance is here **goo.gl/tF1Aer**.

In the main, the new rules apply to disposals in England and Northern Ireland. Scotland and Wales have their own rules on waste disposal, with similarly stringent requirements.

EMI: an eventful year

It's been an eventful year for Enterprise Management Incentives (EMI). EMI made headlines in April, when HMRC revealed problems obtaining continued EU state aid approval. After some uncertainty, it was announced that EMI continues unchanged – and new research underlines the importance of the scheme.

EMI helps companies looking to motivate and retain staff, allowing them to offer shares to selected employees by issuing options. With EMI, an employee can receive shares without a tax bill arising until shares are sold. Share disposal will attract capital gains tax (CGT), but in most circumstances, employees will be able to access Entrepreneurs' Relief, reducing CGT liability to 10%.

For the employer, there is normally no National Insurance charge when options are granted or exercised, or when an employee sells the shares. Employer companies also receive a corporation tax deduction broadly equal to the employee's gains.

EMI is targeted at high-growth companies. Firms in qualifying industries with total assets under £30 million, and fewer than 250 workers are eligible. Employees must dedicate a minimum of 25 hours or 75% of their time to the business.

To qualify, a company must also:

- exist wholly for the purpose of carrying on one or more 'qualifying trades.' Asset backed trades, such as property development, operating or managing hotels, and farming or market gardening are excluded
- not be under the control of another company. This means that if there is a group of companies, employees must be given an option over shares in the holding company.

It is also necessary for options to be capable of being exercised within ten years of the date of grant, but there does not have to be a fixed date.

The benefits of EMI should always be assessed within the context of overall commercial objectives. It can, however, be of special benefit to companies experiencing rapid growth, or those involved in research and development. We should be delighted to advise whether EMI may be an appropriate path for your company.

Café in hot water

Getting the classification right for the supply of goods or services is always important when it comes to VAT. Food retailing is one area where the boundaries between standard and zero rated items can give rise to difficulty. For example, is takeaway food supplied by a business 'hot'? A lot can hinge on getting the answer right, as a recent tax tribunal case shows.

In Pegasus (Manchester) Ltd, a market takeaway outlet sold African and Caribbean dishes, such as rice, wraps and curries. It claimed that food was not supplied hot, and therefore for VAT purposes, should be zero rated. HMRC maintained that the food was hot and should be standard rated. More than £110,000 depended on the one word: 'hot'.

In VAT law, 'hot food' means food which is hot when provided to the customer and

- has been heated for the purposes of enabling it to be consumed hot
- has been heated to order
- has been kept hot after being heated
- is provided to the customer in heat-retentive packaging
- is advertised or marketed in a way indicating that it is supplied hot.

'Hot' is defined as being above 'ambient room temperature', and 'kept hot' has a similarly precise definition. Where food is 'kept hot' for health and safety purposes, or a reason other than enabling the consumer to eat it hot, it may be possible not to standard rate the sale.

A great deal of attention was given by the tribunal to what this all meant in the particular circumstances applying here. During preparation, food was first cooked by Pegasus to 99-100°C, then cooled to 19-20°C; kept at ambient air temperature, and finally stored in a bain marie. Ambient air temperature in the market was 28-30°C, with the bain marie maintaining a constant 56°C. The judge considered that the food was raised to ambient temperature after cooling, and that placing in a bain marie meant, as 'a matter of basic physics', that it was heated. The retailer lost the case.

VAT is often complex, but regular review of procedures can help your business keep on the right side of the rules. Whether you are a retailer selling food, or perhaps looking to expand into new areas, we can help you assess the VAT implications of your business decision.

Housing wealth - Inheritance Tax

It will come as no surprise to have confirmation that it's predominantly the older household that owns the UK's housing wealth. International property experts, Savills, believe that 75% of the UK's homeowner equity is held by the over 50s. Reflecting strong house price growth historically, their report also shows the over 65s owning 43% of all equity, worth some £1.6 trillion. Older households are most prominent in the south west of the UK, where the over 65s own nearly half all homeowner equity.

Death and taxes

Small wonder then, that the yield from inheritance tax (IHT) is rising. The number of estates affected by IHT went up nearly 60% in the six years to 2016/17, and the most recent government statistics report that the net capital value of estates since 2009/10 has increased by £17 billion to £79 billion in 2015/16. About 54% of this increase is attributable to residential property.

Broadly speaking, IHT is paid where a taxable estate exceeds £325,000. It is usually charged at 40% on the value of the estate above this.

The nil rate band is the most significant relief from IHT. It means that a 'nil' rate is applied to the first part of a taxable estate within the £325,000 band. For a married couple or civil partners, any unused percentage of the nil rate band from the estate existing after the first death, can be carried forward and added to the nil rate band of the survivor.

An additional relief, the 'residence nil rate band' (RNRB) is being phased in, allowing a family home to pass to direct descendants, such as children or grandchildren. Provisions also exist to cover situations where someone has downsized, or sold to raise capital, say for care home fees.

For 2018/19, the RNRB is £125,000. It will increase each year until reaching £175,000 in 2020/21. This means that by 2020, a couple will be able to pass on total assets worth £1 million. There is a tapered withdrawal of RNRB for estates worth more than £2 million. This limit does not allow business or agricultural reliefs to be taken into account.

Review

But with the sharp rise in the value of homes over the past decade, there may be times when even the nil rate band and RNRB may not cover the wealth in an estate on death. And whilst it may not be feasible to make the family home the focus of planning, looking at IHT in the round may facilitate strategic decisions.

Transfers of assets between spouses are exempt from IHT – both lifetime transfers and transfers made on death. Many smaller or regular lifetime gifts are exempt from IHT, whilst larger gifts may become exempt after seven years. Gifts to charity have the potential to give an estate access to a lower rate of IHT on some assets, while unused funds in a private pension can pass directly to beneficiaries without being included in the chargeable estate.

It is critical to get the detail right with IHT, so please contact us for further details.

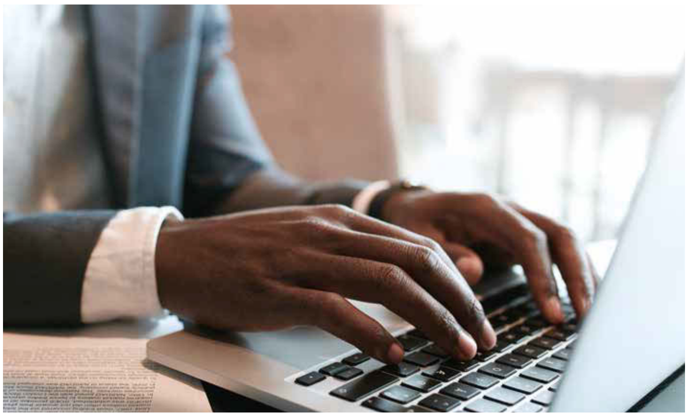
HMRC Business Tax Account: is yours activated?

Making Tax Digital (MTD) brings mandatory change to the way the public communicates with HMRC.

Business Tax Account

At present, taxpayers can use an HMRC online Business Tax Account (BTA) - and many already do so - but it's not essential. This is changing.

With MTD, there will be some things that taxpayers will only be able to do through the BTA. Effectively, the BTA moves to being an integral part of communication with HMRC. There will, for example, be some notifications or confirmations which HMRC will only accept through the BTA. This will be the case even though we act for you as agents. It will also be necessary for businesses to provide HMRC with an email address as part of MTD.



There are provisions for 'digitally excluded' taxpayers – but HMRC's definition of digital exclusion is narrow and may prove difficult to access.

HMRC says it will keep BTA-only contact to a minimum. Clearly however, businesses currently without a BTA need to set one up as soon as possible.

MTD for VAT begins for VAT return periods starting on or after 1 April 2019. Thus, any business which operates above the VAT registration threshold (currently £85,000) will need its BTA up and running before this date.

If you currently use an HMRC online service, you may have a BTA without realising - check the heading of the web page that appears when you next log in. If you don't interact online with HMRC, and don't already have a BTA, the first step is to create a Government Gateway ID via this link **goo.gl/9UAY9b**. Businesses should register as an 'organisation'. Please talk to us if you would like further advice on any aspect of MTD.

Tax tips for the farming business

With the end of the EU Common Agricultural Policy in the UK imminent, the farming business has big change on the horizon. It is therefore a good time to review where you want your business to be in the future, and how you are going to get there.

There are a number of questions that could form the basis of such a review. You might, for instance, want to look at your current business structure. Is the structure optimal, or might this be the time to introduce a partner to the business – for the family farm to bring in the next generation, for example? A plus point here might be lower tax, as partners are taxed just on their share of profits. It might also mean that a lower tax band could be accessed.

However, the timing of changes in the partnership can have significant tax consequences, so this is not a decision to take in isolation. As a case in point, farmers' averaging is a planning tool which can help keep tax bills down amid fluctuating profits. This may be particularly relevant after the impact of drought on crops and livestock this year, for example. But there are also other points to factor in, such as the impact on Class 4 National Insurance contributions. All in all, any decision will need careful consideration within the context of the business as a whole.

Traditionally, averaging meant spreading over two years, but it is now possible to average over two or five years – or not at all. There is, as always, small print to attend to. Averaging is not an option for farming companies – only sole traders and partners. Access to five year averaging is not automatic: eligibility is decided by putting the numbers through a 'volatility test'.

And as mentioned above, the timing of exits or entrances to the partnership can have important repercussions. Averaging claims cannot be made in the year of commencement or cessation. Partners leaving or joining an existing partnership are also affected by these rules; they are unable to make an averaging claim in these years. Timing is therefore key. It will be important to monitor the position for each individual partner, as the impact of averaging will not necessarily benefit every member of the partnership.

Liquidity is another important factor to consider. The timing of capital expenditure and ability to claim capital allowances can affect taxable profits and the size of tax bills. It can also impact averaging claims, averaging being calculated on profit after capital allowances. Again, an overarching plan to take your business through the next few years is likely to pay dividends. We would be happy to advise.

Furnished Holiday Lets – a smart move?

Times have been getting tougher for landlords in the buy to let market. One major factor here has been the restriction in the allowability of finance costs for tax purposes being phased in between 2017/18 and 2020/21. But there are always options in the world of business, and one potential option for the buy to let investor is to diversify into the market for furnished holiday lettings (FHLs).

Tax breaks

The FHL market offers some important tax advantages. The finance cost restriction, for instance, does not apply to landlords of FHLs.

Items such as furniture, equipment and fixtures will be covered by capital allowances as plant and machinery. This is another contrast with the buy to let market, where capital expenditure is not allowable for tax, although there may be relief when certain items are replaced. Pension planning is another plus point, as profits from an FHL business can count as earnings for pensions purposes. The tax treatment of losses can also be advantageous.

FHLs are treated as a trade, rather than an investment. This means capital gains tax reliefs such as Business Asset Rollover Relief and Entrepreneurs' Relief can be claimed, and it may be possible to get relief on gifts of business assets and relief for loans to traders.

But what about one key inheritance tax break for owners of businesses - business property relief (BPR)? BPR is an inheritance tax relief which can help with succession planning, potentially reducing the taxable value of a transfer of relevant business property by 50% or 100%, depending on the type of property involved. In some circumstances, FHLs can provide access to BPR, although succeeding with a claim for BPR may be difficult. To qualify, it is necessary to provide a substantial level of service in addition to the holiday accommodation. A case where a taxpayer recently won the claim shows how high the hurdle can be.

In this case, holiday accommodation in four units in and adjoining the owners' house in the Scilly Isles was provided. Guests could make use of the croquet lawn, relax in 'exceptionally well designed' gardens, or take advantage of a games room, sauna, laundry, swimming pool, golf buggy and bicycles. They were invited to use herbs from the garden to cook with, or take tomatoes from the greenhouse. There wasn't just a barbecue area – the owner would organise barbecues for the visitors. There wasn't just a welcome pack on arrival – the owner would regularly go shopping for crab and fresh fish for guests.

The judge commented that it was the 'personal care lavished upon guests' which distinguished it from the majority of FHLs. It was, tribunal said, comparable to a 'family run hotel'.

Detailed rules

There are detailed rules to keep an eye on in order to access the tax advantages of FHL status. They cover things like the location of the property – which must be in the UK or European Economic Area – and specify what 'furnished' means. There are also very stringent requirements regarding occupancy. It is essential to pay close attention to these to benefit from the FHL regime.

We would be happy to review your property portfolio with you to make sure that your affairs are structured efficiently.

Business disruption: tools to survive

Most UK small firms are 'unprepared' for any form of business disruption, according to research recently published by the Federation of Small Businesses (FSB).

The FSB suggests that a variety of internal and external threats could significantly rock the boat for many small UK firms. Some of the most common risks to businesses include customers failing to pay for goods or services, and the loss of key members of staff. However, a number of other risks are identified, such as IT problems, cybercrime, severe weather, transport issues, and even terrorism.

At present, some 65% of small businesses don't have any plans in place to deal with disruption to the operation of their business or to their supply chains. Clearly, it's an area with which businesses looking to plan for a post-Brexit future will have to engage as a matter of priority.

Mike Cherry, National Chairman of the FSB, said: 'By implementing continuity plans, small firms can prepare for many of the sudden changes that can impact on them directly and their supply chains.'

The FSB has urged larger businesses to assist smaller firms with forward planning. It has also called on local government to emphasise the need for smaller businesses to put continuity plans into place.

'One key step towards ensuring a business is prepared for any supply chain difficulties is continuity planning. This includes identifying the most significant risks to a business' commercial operations and creating a plan to mitigate those risks should any of them materialise,' Mr Cherry commented.

'The costs that businesses face when their supply chains are impacted can be severe and therefore it is crucial that we stress the importance of planning for the future.'

The FSB acknowledged that it's likely that most businesses can anticipate 'Some sort of business interruption issue more than once in their life.' But as well as sounding a note of warning, it is keen to stress that it is possible for smaller enterprises to keep buoyant – and that strategic planning is the answer. 'It is key to resilience that firms are encouraged to consider all risks that they could face,' Mr Cherry said.