



Jonathan Vowles

Chartered Accountants and Tax Advisors

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The early bird could save thousands in tax

Despite some major tax changes recently, with the overhaul in the taxation of non-domiciliaries and capital gains tax, we are still in a period of huge uncertainty both in the economy and the tax horizon.

We already know of expected tax rises coming, including the new 50% income tax rate for individuals with incomes over £150,000. What is uncertain at this stage is what further tax rises are around the next corner. Which means ignoring tax traps, or being unaware of tax breaks, could be extremely costly going forward. Early planning could help save you thousands in unnecessary tax.

As everyone's circumstances are different, and the rules are constantly changing, we would be delighted to talk to you in detail about how the rules apply to you and how you could save tax. We want to help you pay your fair share of tax... and not a single penny more!

Buying or selling commercial property?

You may think that the best time to get an accountant involved with the sale or purchase of a commercial property is after the deal has completed. Whilst it may save some fees, it could be very costly in terms of tax. That's just a blatant plug for your services I hear you say, well perhaps it is, but I am more interested in how we can save you significant amounts of unnecessary tax.

Jonathan Vowles
Chartered Accountants

is an independent firm of
accountants, tax advisors and
business advisors

114 High Street
Cranfield
MK43 0DG
Tel 01234 752566
Fax 01234 752577
info@vowles.co.uk

A true story was recently relayed to me. A care home business had expanded and purchased two new care homes for £2.5 million. A clause in the contract and side election had bound both the seller of the properties and the care home business purchasing the properties to a value for certain fixtures and integral features of the properties. The value given did not change the overall amount of monies that changed hands as part of the transaction.

However the value used for the integral features and fittings seems to have given the vendor a tax windfall and unnecessarily increased the tax burden for the care home business by up to £200,000. Although the care home business could make a claim to capital allowances for the integral features it had acquired, and it could easily justify the claim with the substantial amount of fixtures and features within the properties, it could only use the amount agreed in the purchase. This has lost the care home business up to £200,000 in tax that it could have claimed for.

Although the clause in the contract and election does not directly affect the price paid for the properties, I'm sure that if the owner of the care home business knew of the potential impact on his tax bill then he may have looked to negotiate down the purchase price (recouping some of his lost tax breaks and potentially saving Stamp Duty Land Tax). Alternatively he could have looked to either rephrase the clause or include a higher value, thereby allowing the care home business to make substantial capital allowance claims on these fixtures and integral features. Even though in this case it is the purchaser that has lost out, it could as easily been the vendor.

Tip: Whenever buying or selling a commercial property, always consider VAT issues, Stamp Duty Land Tax, Capital Gains Tax and last but not least the Capital Allowance position. All of which can have a significant impact on your tax position and a serious impact on the commerciality of the deal. These should all be considered, ideally, before negotiations start.

Share opportunities in current market

There has probably never been a better time in recent history to let employees have shares in the company. Share values are low and cash flow is tight, and so rewarding and retaining key individuals through the use of share options or direct acquisition of shares can be an attractive proposition for all concerned. For the employees acquiring shares or receiving options now, when values are low, means that they ultimately pay less for them, or their tax bill is minimal.

Approved share options

One route is the Enterprise Management Incentive (EMI) Scheme, which is a tax efficient, HMRC approved, share option scheme. It is designed for privately owned trading companies. Certain conditions need to be met by the company and employee in order to qualify for the scheme. Options do not need to be granted at market value, but there will be income tax implications for the relevant employees if not. Performance and other conditions can be included and many EMI options are structured as “exit” based such that they cannot be exercised until a company sale – this achieves the twin goals of incentivising and retaining key employees whilst not giving up any of the company shares until necessary. Should an employee leave before exercising the option then they could be excluded from ever receiving shares. The only cost to the business right now would be to set up the scheme.

Issuing shares

If the company would prefer to issue shares directly to the employees or if the qualifying conditions for the EMI scheme cannot be met then other options could be considered, including partly paid shares. Where an employee acquires shares at less than market value an income tax charge will arise on the discount. With partly paid shares full market value is paid for them but a call for the payment is not made until a later date. There will be a beneficial loan but the benefit on kind charge on this would be mitigated if it is a qualifying loan

Exercising options

Another issue is for high-earning employees with existing unapproved share options that can be exercised prior to 6 April 2010. If they can exercise them prior to 6 April 2010 then they could lock into a maximum income tax rate of 40%. If the leave it until after 5 April 2010 then they face a marginal tax rate of 50% (25% higher).

Tip: Where an employee is possibly liable to income tax on shares, perhaps under an approved EMI scheme they pay less than market value for the shares, then allowing them to do so prior to 6 April 2010 could save tax. The increase in income tax rates to 50% in April 2010 or reduction of personal allowance could affect when employees would pay the least amount of tax.

Tip: Consider providing key employees with growth shares that will only benefit from increases in the value of the company after they are acquired. This can incentivise key employees without the need to give them part of the value built up to date.

We can help

Despite statements about simplifying the UK tax system, the truth is that it gets increasingly complex each year. But we can help. We can guide you through the complexities of the legislation and help you to pay much less tax.

So if you would like to discuss ways in which we can help you to make tax savings, or if you would like to discuss any of the issues identified in this edition of 'Pay Less Tax' please do not hesitate to contact us.

Quick Tax Tips and Hot off the Press

QTT – Possible increase in capital gains tax

A couple of experts are suggesting that Capital Gains Tax could increase after 5 April 2009 to the same as the income tax rates, perhaps 40% or even 50% top rate, or perhaps just a withdrawal of Entrepreneurs' relief. If you do believe that this is the case and are likely to be looking to make substantial disposal of assets or business interests in the near future then you may wish to do so by 5 April 2010 to secure the lower tax rates we currently have. If you are unlikely to make such a disposal in the near future but would like to crystallise growth in your asset or business interest at the current rates then there may be ways to do so. For example if it is currently a sole trader or partnership business then by selling that business to a company you could crystallise the gain and tax at today's rates.

QTT – Consider changing your business year end

If profits are falling and you are a sole trader or partnership then it may be worth looking at changing your business year end. For example if your sole trader business year end is normally 30 April and profits have fallen this year, then by changing your year end to 31 March we can have that fall in profits recognised earlier for tax purposes, thereby bringing down your tax bill much quicker.

QTT – Consider incorporating to pay pension contributions

If you are a sole trader or partnership, and your share of income is in excess of £150,000 and you want to make pension contributions into a registered pension scheme then you will be caught by the new pension provisions where tax relief will be limited to 20%.

These new rules are proving to be a big headache for many. However by transferring your unincorporated business into a limited company not only could you make significant annual tax savings on the profits, but you may be able to make significant pension contributions on which up to 40% tax relief is possible. We would be happy to provide an incorporation review identifying the possible tax savings and discuss how tax relief on your pension contributions can be maximised.

QTT – Avoid IR35 biting your business

If your limited company or partnership provides your services then you may need to consider the IR35 position for your business. Unfortunately it is easier said than done. Although the impact of being caught by the legislation is clear, whether a business is actually caught is much more subjective. On top of this whether a business is caught can change during the lifetime of a contract. Although the legislation was initially aimed at the construction and IT industries, its impact is not confined to these alone.

Some believe that HM Revenue and Customs (HMRC) are under resourced and an investigation into their business unlikely. Unfortunately HMRC are becoming more targeted in its methods for establishing those service businesses earning substantial incomes. There are a number of options open to ensure this risk is reduced or in some cases eliminated. The solutions can range from reviews of contracts and working practices to more elaborate planning, depending upon circumstances. However it is safe to say that burying ones head in the sand is not one of them.

QTT – Tax savings don't stop at 65

If you are 65 or over, then depending upon your level of income and circumstances there may be ways to reduce your tax bill. If your income exceeds £22,900 then you may wish to consider changing some of your investments from income producing (assuming they are producing an income currently) to capital growth investments to save you tax. Of course you would need to speak to a financial adviser to ensure it is suitable for you and that suitable capital growth investments can be sourced.

If you are married and at least one of you 65 or over then it may be possible to organise your income and investments between you to maximise the amount of age related allowances that are available to you.

Another option, if you are between, 65 and 75 is that you could consider making pension contributions to bring down your taxable income and again increase the

amount of age related allowances available to you. Again financial advice should be sought first.

QTT – Cash is king

In the current climate it is more important than ever to watch the purse strings. HM Revenue & Customs may be doing just that by delaying tax repayments to taxpayers. The official response is that delays are caused by security checks which seem to take weeks, if not months for some. Whatever the reason rather than pay the tax now and try and reclaim it later, it is better now to pay it in the first place.

For some individuals it may be worth considering making a claim now to reduce their payments on account of this years tax liability in January 2010 and July 2010. If your unincorporated business profits have fallen this year, losses are likely in the current year or you are taking less out of your company this year, then it may be worth making a claim to reduce your payments on account and help improve your cash flow. However in order to make the claims now, rather than try and reclaim the tax after your 2010 Tax Return is completed, we will need to review your income and allowable outgoings to date and estimate these amounts before April 2010. Claims should ideally be made sooner rather than later.

QTT – Tax avoidance mixed messages

You may be aware that HM Revenue and Customs (HMRC) don't like advanced tax planning or schemes of any sort. Tax planning at this level will often attract special attention from HMRC. Despite this HMRC certainly don't always win in the end and there are various tax cases to prove it.

For example despite HMRC winning at the earlier stages, when the case of *Smallwood v HMRC* reached the High Court this year, HMRC eventually lost. The case involved a trust that became resident in Mauritius and capital gains being realised offshore.

The judge's initial words were blunt. He said, "The combined effect of those steps, if the **trick** worked, would be that the sale would attract no capital gains tax by virtue of detailed provisions to which I shall come in due course...". The judge then analysed the legislation carefully and concluded that the scheme did indeed work. This is helpful evidence that advanced tax planning does succeed. If the letter of the law is not broken and the plan is implemented correctly then tax can be avoided.

Before undertaking any planning, advanced or otherwise, it is always worth ensuring that you are comfortable with the issues and close attention from HMRC.

HOTP – Are you ready for the VAT changes

From 1st January 2010 the standard rate of VAT will return to 17.5%. This will impact on all businesses that are registered for VAT. HMRC have issued a detailed guidance which can be found on their website www.hmrc.gov.uk/vat/forms-rates/rates/rate-rise-guidance.pdf.

From 1st April 2010, all businesses with annual turnover of £100,000 or more will be required to file their VAT returns online and pay their VAT electronically. Smaller businesses will still be able to file paper VAT returns for now. Businesses that file their own VAT returns will need to register for VAT online prior to April 2010, using the last VAT return filed and the date the business registered for VAT (which is shown on the VAT registration certificate).

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