RfM Accountants + more

Autumn 2015

www.rfm-more.co.uk

+ more news

Welcome to the latest edition of our newsletter. We trust you will find it interesting and helpful. If you would like to speak to an advisor about any of the matters covered, please get in touch.

Experts in the field

When you think of the term 'business owner' what's the first thing that springs to mind? It probably isn't an image of a farmer with his herd of sheep or cows, but for two of our more rural practices, this is the type of business owner they support on a daily basis.

The farmer's business is conducted out in the field, in the barn or milking parlour and at the auction rooms. They quite literally get their hands dirty managing their 'stock' (and keeping it fed and healthy) and must be on hand to deal with business problems 24/7, every day of the year.

Just as the farmer's business is exceptional, accounting for agriculture, farming and rural business is a specialist area that requires particular expertise and an understanding of the industry. As an example, for tax purposes, stock is treated on a 'herd' basis, with different animals having different tax valuations. In addition, farming businesses can present profits as an average taken over two years and, as of the last Budget in July, this average can now be taken over a longer, 5-year period. There are also a number of tax-deductible expenses that only rural businesses can claim for.

Whilst we can't claim to know how to milk a cow or shear a sheep, we do pride ourselves in ensuring the advice we give to our rural clients is in line with the latest rules and regulations.

Approximately 10% of RfM Fylde's clients are farming or agricultural businesses. Partner Alan Meikle gained invaluable experience working with a largely rural client base in Kirkby Lonsdale before bringing his skills to the practice in Pilling in 1994.

"I really enjoy working with our farming clients. It's challenging but in different ways from a typical business. Some clients don't use computers and we therefore assist them when they need to file VAT and other returns online with HMRC. Going out to meet with clients at their premises also gives us a better understanding of their needs. We also provide them with advice on Inheritance Tax planning and passing the business on to the next generation."

Not surprisingly, RfM Ulverston, located in beautiful South Lakeland, has its fair share of rural and farming clients too.

"We have been providing accountancy and business support services to farms and rural businesses for over 100 years," explains Partner Elaine Harris. "It's a specialist area but we make sure we're on top of current legislation and up to date with what's happening, so we can make a real difference to our clients."

If you would like to know more about our services for farming, agriculture and rural businesses, contact Alan Meikle on 01253 790527 or Elaine Harris on 01229 820003.

Charity begins... at the first tee

A team of golfers representing RfM Preston took to the fairways of Leyland Golf Club in September to raise money for the Baby Beat Appeal at Royal Preston Hospital.

The 3rd Mark Lawrenson Charity Golf Day on 9th September attracted 20 teams of keen amateur golfers from across the region. The RfM team of Paul Newsham, Sean Nicholls, Rob Flanagan and David Auckland did our golfing reputation no harm by coming third with a score of 85, just two points less than the overall winners.

The golf was followed by a swish gala dinner and charity auction. Thanks in no small part to the prize of a week in Antigua donated by Paul Newsham, the day raised over £5,000.

Mark Lawrenson is a patron of the Baby Beat Appeal, which raises funds to provide the Sharoe Green Maternity Unit at Royal Preston Hospital with the latest monitoring equipment, helping to ensure more babies can be born safely.

The RfM Preston golf team with Mark Lawrenson

A casual approach to fundraising

RfM Preston were able to make a difference to another local charity this month too. Every Friday, staff at the office in Leyland swap tailoring for t-shirts and enjoy a Dress Down Day. A small fee is paid and the proceeds are given to a chosen charity. On 25th September, Paul Newsham was delighted to present a cheque for £500 to Amy Hilton from Rosemere Cancer Foundation on behalf of the team.

Paul Newsham with Amy Hilton

It's not fine to file late

Self Assessment tax returns still need to be in on time

Earlier this summer, a news story appeared in the media that implied it could be easy for tax payers who had missed the 31 January deadline for filing their Self Assessment tax return to get out of paying the automatic £100 minimum penalty.

According to HMRC guidelines, individuals can successfully appeal against the penalty if they have a 'reasonable excuse' for filing late. There is an official list of circumstances HMRC consider serious enough to be 'reasonable', the number one being: 'your partner died shortly before the tax return or payment deadline'.

The news headlines appeared following the leaking of an internal HMRC memo to its staff dealing with Self Assessment penalties. Despite the automatic penalty system, around 900,000 people still failed to submit their tax return for the 2013/14 tax year before the deadline of 31 January 2015. In the weeks after the deadline, so many of the late-filers appealed against the £100 minimum penalty they received that they caused a backlog of cases in HMRC. The internal memo detailed a simplified approach to resolving penalties that could be taken; in effect, in the majority of cases, HMRC would accept the taxpayer's grounds for appeal, without questioning the taxpayer, and cancel the penalty.

A subsequent press release from HMRC made it clear that the deadline for appealing fines for the 2013/14 tax year has now passed. The statement did not specify what approach would be taken with individuals missing the 2014/15 tax return deadline on 31 January 2016. It did say, however, that in the longer term, HMRC want to move away from sending out penalty notices as a mechanical reaction to a single missed deadline to instead focus on those who persistently fail to pay or submit their tax returns on time.

It is good news, of course, that HMRC intend to use their right to send out fixed penalty notices in a fair and proportionate way… but it is far safer to meet the deadlines in the first place. **To avoid the last-minute Self Assessment tax return rush, and avoid any risk of filing late, please contact us in plenty of time before 31 January 2016.**

The vital first step in avoiding a tribunal

In 2014, an 'Early Conciliation' process was introduced to help settle an employee's dispute with an employer without going to an Employment Tribunal.

In cases where an individual is considering making a claim to a tribunal, Acas, the Advisory, Conciliation and Arbitration Service, now provides the opportunity for them to resolve the matter with their employer before a legal claim is lodged.

In order to encourage the use of Early Conciliation, an employee is required in nearly all cases to contact Acas and to obtain an Early Conciliation Certificate. Without a Certificate, an employee cannot make an application to an Employment Tribunal.

Part of the reason for the development of Early Conciliation was to respond to the needs of smaller businesses.

The Coalition Government, which introduced the reform, found that smaller companies are proportionately more likely to find themselves the subject of employment tribunal claims, yet in contrast are much less likely to have access to in-house expertise to help them deal with problems.

Although an employee is legally required to contact Acas before making a tribunal claim, they and their employer are not obliged to take part in conciliation and can stop the process whenever they wish. Since its introduction, however, Acas considers Early Conciliation to have been a success, providing quicker resolutions of disputes without legal action.

Maximising tax relief for two homes

The UK tax regime provides an important relief from the Capital Gains Tax charge (CGT) on the gains made by owner-occupiers on the sale of their private homes. This is known as Principal Private Residence relief (PPR).

The general principle is that only one home can count as a PPR at any one time. However, prior to 6 April 2014, where a private home qualified for PPR at any stage during the period of ownership, the last three years of ownership qualified for PPR, even if the property was not lived in during that three year period. That period was reduced for most individuals to 18 months for disposals made on or after 6 April 2014.

Although the period has been reduced there are still potential tax planning benefits for someone who has recently acquired an additional property which will also be a home, for example a property 'in the country' which will be lived in at various periods in the year.

Example

Mr and Mrs White have lived in a property in Leeds for a number of years. They are now semi-retired and acquire a second property in Wales in which they intend to also reside. They start to occupy the Welsh property on 1 June 2015.

As the Leeds property already qualifies for PPR up to 1 June 2015, the gains accruing on a time-apportioned basis to the last 18 months of ownership will be relieved even if they nominate the other property to be their PPR.

They therefore elect for the Welsh property to be their PPR on 1 December 2016. This means that this property will also benefit from PPR for the last 18 months of ownership.

They may vary that nomination back to the Leeds property at any time. If the variation is made within a short period of time then any resulting gain on the Leeds property will likely be covered by their annual exemptions.

If they want to change their minds again about the nomination, they can do so. However none of this flexibility is available if the first election has not been made to HMRC within two years of the time when the second property became available to live in.

Last year, the Government issued proposals to remove the ability for everyone to make an election but has since changed its mind, implementing changes which affect non-resident individuals with property in the UK and UK residents with property abroad instead.

Prior to 6 April 2015, an individual who was not resident in the UK was not subject to UK CGT on residential property so could sell the property free from UK CGT irrespective of the availability of PPR relief. From 6 April 2015, UK residential property classed as 'dwellings' is brought into UK CGT for non-UK resident persons.

Further changes impose additional PPR restrictions. Examples of those affected are:

- UK residents who go to work abroad and acquire a second home in the country in which they work
- individuals who retire overseas but keep their homes in the UK.

They may be entitled to PPR for the period prior to 6 April 2015 but will have difficulty in getting the PPR to apply to the UK property after that date. However the last 18 months of ownership may continue to qualify for PPR.

If these changes affect you, or you wish to make an election for PPR, please get in touch.

FOCUS ON: Tax planning and dividends

Fair share?

Keeping things in the family to reduce tax liabilities

It has long been common practice for owner-managed companies to seek to minimise the tax position of shareholder-directors by involving other members of the family. By using the personal reliefs and lower rate tax bands of each family member, income is therefore diverted from the higher rate taxpayer. However, anti-avoidance rules need to be considered to determine whether a diversion is effective, particularly in spouse scenarios (typically husband and wife).

Where it is considered that arrangements have been made by one spouse which contain a gift element – often referred to as 'an element of bounty'– then the 'settlements' rules may apply. A key purpose of these rules is to ensure that income alone, or a right to income, is not diverted from one spouse to the other. Genuine outright gifts of capital, or a capital asset from which income then wholly belongs to the other spouse, are not caught by the rules because of a specific exemption from the settlement rules.

Family company shares and the dividend income derived therefrom have frequently been the subject of challenge from HMRC on this matter. An example of a structure which will be challenged is the issue of a separate class of shares with very restricted rights to a spouse, with the other spouse owning the voting ordinary shares.

A recent case

An area of potential risk is the recurrent use of dividend waivers, particularly where the level of profits is insufficient to pay a dividend to one spouse without the other waiving dividends. In a recent tax tribunal case, dividend waivers executed by two appellant husbands in favour of their spouses constituted a settlement for income tax purposes. The dividends therefore became taxable on the husbands.

The basic facts were that two directors of a company each owned 40% of the shares in the company. Their wives each owned 10% of the shares. Dividends totalling £130,000 were paid in respect of the shares in the company's accounting period to 31 March 2010. The four individuals received the following:

Mr D	£33,000 (25.38%)
Mrs D	£32,000 (24.62%)
Mr M	£33,000 (25.38%) and
Mrs M	£32,000 (24.62%).

This clearly does not correspond to the legal and beneficial shareholdings and had been achieved through dividend waivers. The same type of mechanism had been used to allocate dividends back to the year ended 31 March 2001.

The verdict

HMRC argued that the taxpayers had waived entitlement to dividends as part of a plan which constituted an arrangement with an intention to avoid tax by seeking equalisation of their dividend income. The appellants' arguments included the contention that the waivers had been executed to maintain the company's reserves and cash balances in order to accumulate sufficient of each to fund the purchase of the company's own freehold property.

The Tribunal preferred the submissions of HMRC that, had this been the case, the aim could have been achieved by other means, such as voting a lower dividend per share. The Tribunal determined that the waivers would not have been made if the other shareholders were a third party and therefore there was 'an element of bounty' sufficient to create a settlement.

Basic tax planning is still an activity that many will seek to use to mitigate tax liabilities but, as this example illustrates, care must be taken in the current anti-avoidance environment to avoid the traps.

If you would like us to review your position or to discuss any other tax or tax planning matter, please get in touch.

Will you be limited by being limited?

In the Summer 2015 Budget, George Osborne announced fundamental changes to the way in which diviadends are to be taxed which will apply to all dividends received from 6 April 2016. Some individuals who extract profits from their company as dividends may need to consider increasing dividend payments ahead of this date.

When a dividend is paid to an individual, it is subject to different tax rates compared to other income due to a 10% notional tax credit being added to the dividend. So, for an individual who has dividend income which falls into the basic rate band, the effective tax rate is nil as the 10% tax credit covers the 10% tax liability. For a higher rate (40%) taxpayer, the effective tax rate on a dividend receipt is 25%.

From 6 April 2016:

- The 10% dividend tax credit is abolished with the result that the cash dividend received will be the gross amount potentially subject to tax.
- New rates of tax on dividend income will be 7.5% for basic rate taxpayers, 32.5% for higher rate taxpayers and 38.1% for additional rate taxpayers.
- A new Dividend Tax Allowance will remove the first £5,000 of dividends received in a tax year from taxation.

Many owner-managers running their business through a limited company will pay more tax next year if most of the profits are paid out as dividends rather than as a salary. This prospect raises a number of issues:

- There is still a benefit in tax terms for most individuals to continue to trade as a limited company. The tax saved by incorporation compared to being unincorporated will be reduced next year but there is still an annual tax saving.
- There is still a benefit for a director-shareholder to take a dividend rather than a salary although the amount of the tax saved will be less than under the current regime.
- If you do not currently extract all the company profits as a dividend, you may wish to consider increasing dividends before 6 April 2016. However, other tax issues may come into play, for example the loss of the personal tax allowance if your total 'adjusted net income' exceeds £100,000. There will also be non-tax issues, such as the availability of funds or profits in the company to pay the dividend.

If you are thinking about changing the amount of dividends taken, please get in touch before making any final decisions.

PLEASE NOTE: The above conclusions are based on limited information that has been supplied so far by the Government on the new regime. We anticipate draft legislation to be published by the end of the year.

Why the new 'flat rate' pension isn't quite as simple as it sounds

By its very name, the new 'flat-rate' State Pension scheme suggests a straightforward, fair system where everyone will get the same amount; so will they?

The simple answer is no.

Which leads us to the more complicated answer: the amount you will get will depend upon a number of factors.

These include:

- how many qualifying years you have on your National Insurance (NI) record
- how many years you have built up an entitlement to the additional State Pension under the current system
- how many years you may have been paying lower NI contributions because you have been in a salary-related workplace pension scheme or you received NI rebates which went into a personal pension plan. Either of these scenarios had the effect of 'contracting out' a person from full entitlements under the State Pension scheme.

The new State Pension scheme applies to everyone who reaches State Pension age on or after 6 April 2016. The full State Pension will be at least £151.25 but the actual amount will be set this autumn. People who have no contribution record under the current system will have to obtain 35 qualifying years of NI credits on their record to give them the flat-rate amount.

Transitional provisions

However, for individuals who have already built up a NI record (which is nearly everyone reading this article) there are transitional provisions which take into account the NI record accrued up to 5 April 2016. This is a reasonable complication to have in moving to the new system. Without them, people who have accrued a substantial entitlement under the current system of basic and additional State Pension would be treated very differently depending on whether they reach State Pension age on 5 April 2016 (and thus receive a pension under the current system) or on 6 April 2016 (when the new system applies).

Under the transitional provisions, your NI record before 6 April 2016 is used to calculate your 'starting amount' for the new system at 6 April 2016. Your starting amount will be the higher of either:

- the amount you would get under the current State Pension rules (which includes basic State Pension and additional State Pension)
- the amount you would get if the new State Pension had been in place at the start of your working life.

Example
Self-employed

Joe will reach his State Pension age in October 2020 (the State Pension age will have risen from 65 to 66 by then). He has been self-employed except for the early part of his working life and he has no entitlement to additional State Pension. He has 32 qualifying years on his NI record.

His starting amount on 6 April 2016 (based on current figures) will be:

- *under the existing rules - 30 years' NI record would give a full entitlement to the basic State Pension of £115.95 a week*
- *using the new rules - Joe would get £138.29 a week (£151.25 x 32/35).*

Therefore his starting amount is £138.29. As his starting amount is less than the full rate of the State Pension, if he continues working for three years after 6 April 2016 he will accrue sufficient additional pension rights under the new system to bring him up to the full rate of £151.25.

Example
Employed

Maureen will reach her State Pension age in October 2020. On 6 April 2016, Maureen has 35 qualifying years on her NI contribution record. During her working life, Maureen has had short periods when she was contracted out of the additional State Pension.

Her starting amount on 6 April 2016 will be:

- *under the existing rules - her 35 years' NI record would give her a basic State Pension of £115.95 a week plus £86 additional State Pension but a deduction for her contracted out period of £32 (this will be computed by the Department of Work and Pensions). This totals £169.95*
- *using the new rules - Maureen would get £151.25 less a deduction of £32. This totals £119.25.*

Maureen's starting amount will be the higher of these two amounts, which is £169.95 a week. As her starting amount is more than the full rate of the State Pension, she cannot accrue additional pension rights under the new system.

Get a state pension forecast

In some cases, you can get a Flat-rate Pension forecast online but you may need to request a forecast by post. Go to **www.gov.uk/state-pension-statement** to find out.

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