TAX NEWSLETTER
September '16

Dear Friend

Welcome to our September tax newsletter. Our monthly updates are designed to keep you informed of the latest tax issues.

The Autumn Statement from the new Chancellor of Exchequer will be delivered on the 23rd November. We await the first post Brexit statement with interest.

Remember, we are here to help you so please contact us if you need further information on any of the topics covered.

Best wishes

Godley Tax Team

WORLDWIDE DISCLOSURE FACILITY (WDF)

The Worldwide Disclosure Facility (WDF) was launched on 5 September 2016 and will run up to 30 September 2018. After which new sanctions under Requirement to Correct will be introduced that reflect HMRC's toughening approach. HMRC have made in clear that individuals will still be able to make a disclosure after that date but those new terms will not be as good as those currently available. The WDF is only accessible using HMRC's online Digital Disclosure Facility (DDF), which is also supposed to streamline the process.

Anyone who wants to disclose a UK tax liability that relates wholly or partly to an offshore issue can use the facility. An offshore issue includes unpaid or omitted tax relating to:

- income arising from a source in a territory outside the UK;
- assets situated or held in a territory outside the UK;
- activities carried on wholly or mainly in a territory outside the UK; and

- anything having effect as if it were income, assets or activities of a kind described above.

It also includes funds connected to unpaid or omitted UK tax not included above, that individuals transferred to a territory outside the UK or are owned in a territory outside the UK.

The advantage seems to be if the disclosure is correct and complete and individuals fully co-operate by supplying any further information that HMRC ask for to check the disclosure, HMRC have indicated that they will not seek to impose a higher penalty, except in specific circumstances such as for example the individual was already under enquiry by HMRC. Unlike the LDF, within the guidance for WDF, there is no immunity from criminal prosecution. Therefore, to calm some of the nerves and motivate individuals to make unprompted disclosure HMRC have indicated that –

Criminal Investigation will be reserved for cases where HMRC needs to send a strong deterrent message or where the conduct involved is such that only a criminal sanction is appropriate.

In addition to WDF there are other campaigns which are running side by side such as Let Property Campaign, Second Incomes Campaign and Credit Card Sales Campaign. Individuals will need to self-assess how many years do they need to include on their disclosure. In certain cases matters relating to direct tax may need to be disclosed for the previous 20 years and for some Inheritance Tax disclosures could be for more than 20 years. VAT is not within the scope of WDF.

Our tax team can assist you to determine which years would need to be disclosed. After undertaking a review we will be able to inform you which option would be most appropriate for you to make an unprompted disclosure to HMRC and bring your UK tax record up to date.

Our Godley tax team has experience and a proven track record in assisting individuals in regularising their UK tax affairs. If you are not sure of your UK tax position and would like to talk through how the above campaign may be appropriate for you, do speak to your contact person at our office or Viral Haria or Hemel Khimasia

LIQUIDATING A COMPANY - IS IT A CAPITAL GAIN?

One of the anti-avoidance measures being introduced by the latest Finance Bill potentially changes the way that certain payments to shareholders will be taxed. This may result in payments following some company liquidations being taxed as dividends instead of capital gains.

The Government is concerned that the new higher rates of income tax that have applied to dividends since 6 April 2016 may tempt some shareholder / directors to extract value built up within their companies in a capital form, rather than paying out the retained profits as dividends. This is because capital gains are generally taxed at a lower rate than income, possibly as low as 10% where entrepreneurs relief is available.

For example, a higher rate taxpaying shareholder receiving £100,000 on the liquidation of his company would pay

£32,500 (32.5%) if the anti-avoidance applies, whereas CGT would be just £10,000 (10%) if entrepreneurs relief is available. Consequently, new stricter rules are being introduced to apply to transactions on or after 6 April 2016.

When is a liquidation taxed as income?

For the new anti-avoidance rules to apply, the company being wound up must firstly be a Close Company and the individual must have held at least a 5% interest in the company (ordinary share capital and voting rights).

A further condition is that the individual (or connected person) continues to carry on the same or a similar trade or activity to that carried on by the wound-up company within the two years following the distribution.
It must also be reasonable to assume, having regard to all of the circumstances that the arrangements appear to have a tax advantage as one of the main purposes.

Can we obtain clearance prior to the liquidation?

Accountants and tax advisors requested that the new anti-avoidance rules should provide a formal clearance procedure prior to the transaction, thus providing certainty as to whether or not the payment would be taxed as income or capital. Unfortunately, there is no formal clearance procedure.

HMRC have drafted a standard reply that sets out a small number of examples and they are working on more detailed guidance, which should be published before the end of this year.

This is a very complex area and we suggest that you contact us before you consider liquidating your company.

BUYING A LOSS MAKING COMPANY

Another important announcement in the March Budget was the proposed relaxation in the rules for setting off a company's losses against the profits of future periods. These proposed changes that will allow set off against profits of any source are currently being consulted on and, if enacted, will apply to losses arising from 1 April 2017 onwards. Until then the set off of losses remains restricted, particularly when there is a change in the ownership of the company.

Currently, where there is both a change in the ownership of a company and also a major change in the nature or conduct of the trade carried on by that company within a 3 year period, the carry forward of trading losses is denied from the date of the change ownership. This measure is clearly designed to restrict the utilization of losses following a company sale.

HMRC take a great deal of interest in the way in which the trade is carried on during the run up to the sale and also post sale and have recently reissued detailed guidance as to how they interpret the rules based on previously decided cases.

For example, changes to improve company efficiency and rationalizing the product range

are not viewed as major changes. However, changing the customer base or market sector being supplied may be seen as a major change, thereby blocking the carry forward of trading losses against future profits.

Trading losses can be a significant factor in business sales and we can advise you accordingly.

Merger of trades following an acquisition

HMRC have recently won a case before the Upper Tier Tribunal that the trading losses of a competitor company could not be set off against the profits of the acquiring company following the merger of the trades of the two companies. The two companies in question 4 were both involved in the retail trade where loss making department stores were merged with 3 profitable stores. The court held that the trading losses should be streamed and could only be set against future profits of the 4 loss making stores, overturning a previous decision by the First Tier Tribunal.

Buying the trade and assets of the target company

Note that if instead of buying the loss-making company, the trade and assets are acquired, then the trading losses will lapse and will not be available to the purchasing company. This however may be commercially more attractive as the purchaser will not take over the liabilities of the vendor company.

TEAM NEWS – ARTICLE ON THE LATEST NEWS ON INDIA'S TAX ENVIRONMENT

We are pleased to announce that Vipool Shah, our managing director, and Manish Shah of SKP have published an article highlighting the latest news and key changes within the Indian tax environment.

The article has been published in the 1st edition of the Advanced Diploma in International Tax Voice (see page 6), a supplement managed by the Chartered Institute of Taxation.

The article highlights how the tax environment in India has become quite dynamic and that there is much being done to create a taxpayer friendly environment for compliant taxpayers. Including the recently passed Goods and Services Tax 'GST', which some say is the biggest tax reform since India's independence!

If you or your business is being affected by these changes and would like to talk through these changes please do not hesitate to contact Vipool Shah.

TAX DIARY OF MAIN EVENTS FOR SEPTEMBER / OCTOBER 2016

- 1 September - Corporation tax for year to 30/11/15
- 19 September - PAYE & NIC deductions, and CIS return and tax, for month to 5/9/16 (due 22 September if you pay electronically
- 1 October - Corporation tax for year to 31/12/15
- 5 October - Deadline for notifying HMRC of chargeability for 2015/16 if not within Self-Assessment and receive income or gains on which tax is due
- 19 October - PAYE & NIC deductions, and CIS return and tax, for month to 5/10/16 (due 22 October if you pay electronically)
- 31 October – Deadline to file paper Self-assessment returns for 2015/16

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