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October 2019		
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Year end tax planning for companies

1. Advising the client

It is advisable to meet with your client in advance of the year end, perhaps up to two months before the year end to allow time for any actions that are agreed at the meeting. You may wish to follow this three-stage process for advising your client.

1.1 Plan for the meeting

You should request information about the current year – eg a trial balance – when you agree the date for the meeting. It is important that you review this in advance so that you are prepared for the meeting. You may wish to prepare a draft tax calculation. This will help the client to plan for the tax payment that is due, and it will help you to illustrate the tax saving arising from any actions that you propose. See section 3.

Further, you should review your files to determine the position with regard to previous years; for example, are any returns yet to be filed? Are there any ongoing HMRC enquiries? Should any claims and elections be made, varied or withdrawn? See section 2.

Finally, the meeting is a good opportunity to discuss your client's plans for the business and to make them aware of any recent changes that could impact on their decisions. See section 4.

1.2 Make the most of the meeting

You should arrive at the meeting with a list of points that you want to discuss with the client; tick them off as you work through them. This will help you ensure that no points are missed. You should make notes of any advice that you give the client and any actions that are agreed.

Question your client on their plans for the company for the future. Are there any tax implications which require advice, either at the meeting or following it?

Request any further information that you need. If you are at the client's premises, could you collect this while you are there?

1.3 Follow-up on the meeting

It is good practice to provide the client with a written record of advice that has been given verbally, be that in the form of a letter, a report or an email. This is also a good opportunity to remind the client of any actions points from the meeting that fall to them.

Make a list of your action points and work through them, ticking off as you go through them.

With regard to earlier years, consider completing a checklist to record that you have considered all possible claims and elections.

2. Dealing with prior years

2.1 Deadlines to be aware of

There are two key deadlines relating to the corporation tax return for an accounting period:

1. the filing deadline: the company has 12 months from the end of the period (the 'filing date') to submit its return for that period; and
2. the amendment deadline: the company has 12 months from the filing date to amend its return for the period.

Many tax reliefs and exemptions – for example, capital allowances and enhanced relief for R&D - require the company to make a claim or election within a specified period. In most cases, the claim/election should be made in the company's tax return within two years of the end of the accounting period.

In some cases, the claim and election may be made outside of the return, generally within four years of the end of the accounting period. The most common claims falling into this category are set out below.

- repayment of tax paid under CTA 2010, s. 455 (overdrawn directors' loan accounts);
- rollover relief in respect of a chargeable asset for a single company;
- rollover relief in respect of a chargeable asset for a group;
- rollover relief in respect of an intangible fixed asset for a single company; and
- rollover relief in respect of an intangible fixed asset for a group.

If you have missed the deadline, consider if:

- your client's circumstances are such that one of the special rules that apply to vary the time limit apply in this case; For example, where the return has been subject to an HMRC enquiry. See In-Depth at 191-835; or
- HMRC may accept a late claim (see the following section).

2.2 Making a late claim or election

HMRC have the discretionary power to accept late claims and elections for many tax reliefs; for example, capital allowances, group relief and R&D tax relief.

The procedure for making a late claim is set out in Statement of Practice SP 5/01.

Note: although the Statement of Practice refers to claims to capital allowances, group relief and trade losses only, it applies with regard to other tax reliefs where the relevant legislation gives HMRC the discretionary power

to accept a late claim. This is confirmed in HMRC's manuals (for example, at CIRD 81800 with regard to R&D tax relief).
Per SP 5/01, HMRC will accept a late claim where the claim was not made in time due to "circumstances beyond the company's control". The following are examples given in SP 5/01 of circumstances that do and do not meet this test:

Circumstances that are beyond the company's control:

- At the date of the expiry of the time-limit, the company or its agents were unaware of profits against which the company could claim relief.
- The amount of a profit or loss depended on discussions with HMRC which were not complete when the time-limit expired, and the delay in agreeing figures is not substantially the fault of the company or its agents.
- An officer of the company was ill or otherwise absent for a good reason; the absence or illness arose at a critical time and prevented the making of a claim within the normal time-limit; there was good reason why the claim was not made before the time of the absence or illness; and there was no other person who could have made the claim on the company's behalf within the normal time-limit.

Circumstances that are not beyond the company's control:

- Oversight or negligence on the part of a claimant company or its agent.
- Failure, without good reason, to compute the necessary figure.
- Illness or absence of an agent or adviser to the company.

Do not be deterred from making a late claim if you find that the circumstances were not beyond the company's control. HMRC's guidance (at CTM 97065) states that HMRC may allow a late claim in circumstances that are not beyond the company's control if "it would clearly be unreasonable to refuse it".

2.3 Overpayment relief

Where a company has paid tax which it believes not to be due, and it has no other options open to it for claiming relief, it may make a claim for the tax to be repaid. The claim must be made in writing no later than four years after the end of the relevant period.

A claim can be made in limited circumstances only. Circumstances in which a claim cannot be made include where the overpayment of tax relates to a mistake in a claim or election or in making/not making a claim or election.

3. Dealing with the current year

3.1 General approach

The timing of income and expenditure can have a significant effect on the amount of the company's taxable profits for the current period; put simply, the profits of the current period will be reduced if:

- income can be deferred to the next period; and/or
- expenditure that would otherwise fall in the next period can be brought forward to the current period.

Where the rate of corporation tax is stable, this has a cash-flow advantage only. However, where the rate of tax will fall, this could mean an overall tax saving. The rate of corporation tax will reduce from 19% to 17% from 1 April 2020.

Clearly, this is only possible within the restrictions imposed by accounting practice and the tax rules.

3.2 Provisions

A business may have an obligation to pay a sum in the future; for example, a company that has carried out construction work, and has received payment for work done, may have been notified of a claim against it. Where the obligation exists at the end of the period, it may be appropriate to provide for the claim in the accounts for that period.

The amount provided for will be deductible for tax purposes where:

- the accounting rules for recognising the provision in the trader's accounts are satisfied. The conditions in FRS 102 are as follows:
    - there must be a present legal or constructive obligation to pay the sum;
    - that obligation must result from a past event;
    - it must be probable that the business will make a 'transfer of economic benefits'; and
    - it must be the case that the amount of the obligation can be estimated reliably; and
- the provision does not fall foul of any of the tax rules. These are as follows:
    - it must relate to revenue expenditure (ie not capital expenditure);
    - it must not conflict with any tax rule governing the time at which expenditure is allowed; for example, the tax rule which requires a bonus recognised in Yr 1 to be paid within nine months of the end of Yr 1 if tax relief is to be claimed for Yr 1 (see 3.3); and
    - it must be estimated with sufficient accuracy.

3.3 Tax rules concerning the timing of the deduction

A number of tax rules apply to change the timing of the deduction of the expenditure. These include the following:

- **Wages**: a deduction may be claimed for salary costs relating the period where those costs are paid within nine months of the end of the period. This is most likely to be an issue for bonuses for directors where there may be a delay in making the payment.
- **Pension contributions**: these are deductible on a paid basis. This means that any pension contributions that relate to the period, but are not paid before the end of the period, should be added back in calculating the company's tax liability for that period.
- **Capital expenditure**: The general rule is that capital expenditure is incurred for capital allowance purposes when there is an unconditional obligation to pay for it. In many cases, this will be the date on which the asset is delivered. With some exceptions (for example, where credit terms exceed 4 months), this is not affected by the payment date; ie it is not relevant that payment is made after the delivery date.
- **Interest payable to a participator**: Interest paid by a close company to a participator in that company is subject to special rules. Interest paid for the current period is deductible for that period if it is paid within 12 months of the year end.

Example

The company has an accounting profit of £450,000 for its accounting period ended 31 December 2018 after taking into account pension contributions of £23,000 and wages of £260,000. All amounts were paid before the year end with the exception of pension contributions of £3,000 – which were paid in February 2019 - and wages of £60,000. The accrued wages were paid as follows: £40,000 in July 2019 and £20,000 in October 2019.

The accrued pension contributions of £3,000 are added back as they were paid after the year end. Of the accrued wages, the £20,000 not paid within nine months of the year end is added back. Relief for both amounts will be available in calculating the company's taxable income for its year ended 31 December 2019.

3.4 Tax rules applying to loans to participators

The company may have a liability to tax under CTA 2010, s. 455 in respect of loans to participators made during the period. Relief from the charge is available where the loan is repaid within nine months of the year end. Anti-avoidance rules apply to prevent 'bed-and-breakfast-type' arrangements.

Section 455 tax is repayable nine months and one day after the end of the period during which the repayment of the loan is made.

Example

The company made a loan of £40,000 to a participator during its year ended 31 December 2017. £10,000 was repaid on 1 June 2018 and the balance of £30,000 on 1 November 2019.

£30,000 was outstanding nine months after the end of the period during which the loan was made. This gave rise to a section 455 tax liability at 32.5% of £9,750. The due date for payment was 1 October 2018.

The loan is repaid in full during the year ended 31 December 2019. The section 455 tax is repayable to the company on 1 October 2020.

4.Looking forward

4.1 General approach

The year-end planning meeting is a good opportunity to plan ahead for the next accounting period. You may wish to approach this by:

- Considering what could have gone better this year; ie are there any areas where the client's record-keeping could be improved or where, with some planning, a tax deduction could be secured for expenditure that would otherwise be disallowable?
- Discussing with the client their plans for the next period; for example, are they intending to carry out any R&D activity and if so, will the expenditure qualify for relief? See 4.2.
- Making them aware of recent changes in tax rules, rates and allowances which may have an impact on their activities going forward. See 4.3.

4.2 Plans for the business

Areas to consider include the following:

- **A significant spend on plant and machinery**. You may wish to consider if capital allowances will be due and if so, how will they be given. For example, will part or all of the annual investment allowance be available?
- **Buying new premises**. Capital allowances are relevant here, particularly where fixtures and fittings are involved. Will the new premises replace a current building? If so, you may need to consider whether a gain will arise on the disposal of the old premises and if so, whether a claim for rollover relief should be made.
- **Increased or reduced profits**. An increase in profits may push the company into the quarterly payments on account system for corporation tax. Where the business is expected to make a loss, consider how relief for the loss could be obtained.
- **Expanding overseas**. You may need to consider if the company will have a permanent establishment overseas. If so, should the company consider electing into the branch exemption regime? The company

may wish to set up a separate company to manage its overseas affairs. If so, will the company be UK resident?

- **Selling or acquiring a business**. You client may be pondering an acquisition, or perhaps part or all of the business is to be sold. The way in which the transaction is structured can have significant tax implications. On a disposal, it may be that action taken now could increase your client's after-tax receipt further down the line.

4.3 Recent developments

Areas to consider include the following:

- **New structures and buildings allowance**. This provides relief for capital expenditure incurred on or after 29 October 2018 on new commercial structures and buildings. It is given at the rate of 2% per annum.
- **Annual investment allowance (AIA)**. The AIA has increased on a temporary basis from £200,000 to £1,000,000; it will revert back to £200,000 from 1 January 2020. It is important that your client is aware of this if they are planning any significant capital expenditure in the near future.
- **Amortisation relief for intangibles**. This is a new relief for goodwill and related assets, acquired on or after 1 April 2019, as part of the acquisition of a business which also involves the acquisition of qualifying IP assets.
- **Reduction in the rate of tax**. The rate of corporation tax will fall from 19% to 17% from 1 April 2020.
- **Possible cap on R&D tax credits**. The government is consulting on imposing a cap on payable R&D tax credits for SMEs. The cap would apply by reference to the company's total PAYE & NICs bill and so is likely to be of most interest to companies engaged in R&D who use externally-provided workers or subcontractors, rather than their own staff. If the cap is enacted, it will apply from April 2020.