A Topical Tax Update 2023

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Section 1	What's left from recent budgets and mini-budgets
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Section 4	Family Investment Companies
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Section 1: Recent Tax changes from Autumn 2022 & The March 2023 Budget

The 2023 Budget

- 12 New Investment Zones where tax favoured treatment for business investment will become available.
- “Full Expensing Tax Relief” – 100% tax deduction from 1//4/23 for plant and machinery and IT expenditures.
  - But only for corporation tax businesses
- Annual investment Allowance permanent at £1million for other businesses
- A 50% Expensing Relief for corporates for “special rate expenditures.

The 2022 Autumn Statement (i)

- Nothing on:
  - CGT Rates
  - Income tax rates
  - Capital Allowances

- And nothing in the 2023 Spring budget except confirmation that restricted exemptions will go ahead

The 2022 Autumn Statement (ii)

- The R&D relief rate for SMEs has been cut to 86% and the credit rate to 10%
- BUT – a new 27% refund rate is to be introduced for loss-making SME's
- SDLT cut will remain only until March 2025

CT and 31/3/23

CT rates are rising:-

- 25% on profits and gains above £250,000
- 19% below £50,000
- Marginal rate 26.5% between these thresholds

- ALSO – return of the associated company rules
- AND – Close Investment Companies always at 25%

CT and 31/3/23

- Are there any planning steps to take before the change?
- What to think about once the change takes effect?
- How will all this affect the owner-manager's tax position?

CT and 31/3/23

Planning for 31/3/23 year ends?

- Consider the ownership structure
  - Share ownership
  - Number of companies which are associated
  - Financial arrangements among associates?
  - For small companies - disincorporation
- What about a change of accounting date?
  - Will this be worthwhile
  - Can a one-off deferral of CT be achieved?
    - How do annual profits arise across the accounting period?

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CT and 31/3/23

Planning for 31/3/23 year ends

- Investment companies
  - Rental businesses are not affected
  - But other investments will suffer 25% CT
  - So – could these activities be changed or perhaps moved into a trading company?
    - But how will this affect the “trading” status of that company for BADR and IHT business relief purposes?

CT and 31/3/23

Planning for 31/3/23 year ends

- What about deferral of capital allowances claims?
- What about deferral of other planned expenditures to achieve a higher rate of CT relief?
  - But consider GAAP/IFRS rules and also commerciality
- Consider also the timing of any planned capital gains?
  - Would acceleration achieve less tax? (Practicality)
- What about loss relief claims?
  - Would carry forward be better than carry back or sideways offset?

CT and 31/3/23

Associated companies?

- Do we really need each company?
- Can smaller companies be made dormant
  - Remember pure deposit income can be ignored if the funds are not actively managed
- Can a change of share ownership be done to alter the “association” rules applying?
  - But will this have other “control” and management/legal and commercial implications?

CT and 31/3/23

Planning after 31/3/23:-

- Should we consider the payment of:-
  - Inter-company management charges?
  - Inter-company financial charges?
- Consider also:-
  - Pension contributions
  - Capital Allowances
  - Reorganising share ownership structures?

Planning for 31/3/23 year ends?

For new ventures:-

- Is a company the best/optimum business vehicle now?
- For medium sized business would an LLP paying income tax be better? Unlikely but there may be cases where this is worth considering.

- New investment activities – is a company still viable for smaller income levels?

Section 2: Some Recent Tax Cases

Gray & Farrar V HMRC

A business providing matchmaking services on an international basis.

- Company argued that their services provided to non-EU customers should not be liable to VAT
  - They were providing "consultancy services" and the provision of information which

➢ Court decided that the main element of their services were " the provision of introduction" which is not the same as consultancy.

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Coller V HMRC
A domicile case

Taxpayer born in England and had lived here all his life.

- Had Austrian father and Irish Mother

- Case contains the most detailed and recent exposition of the rules on domicile for UK taxation purposes.
- A specific intention to move abroad had to be distinguished from some vague possibility.
- Domicile acquired at birth is very powerful for UK tax purposes and was upheld in this case.

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Fresh Consulting Ltd (TC 8606)

When checking the accuracy of COVID support grant claims HMRC demanded access to bank statements

  - No CT returns filed since 2016 but the company made furlough claims.
- Decision – bank statements are "Statutory Records" so there is no right of appeal against a notice requesting them.
- What records can HMRC ask for in an enquiry then?
  - What does supplementary information mean?

Innovative Bites Ltd (TC8605)

What is a marshmallow?

- Confectionery - Standard rate vat
- Food product = zero rated.

- From the viewpoint of the typical consumer these were marketed in the barbecue section for use in a meal and so had to be regarded as a food product.

When are dividends taxable?

M Jays and another v HMRC

- Dividends credited to a director’s account
- But by formal agreement could not be drawn until a bank dispute had been settled.
- Court decided that the dividends were not “paid” until there was an unfettered right to draw,

Gould V HMRC 2022

- Dividends for two brothers were declared on 31/3/2016
- One took his dividend on 5^{th} April 2016 and the other in December 2016.
- Court decided that as there was no “enforceable right” to the dividends they were taxable when received.

I Tavendale
When is a transaction completed?

Case involving Scots version of Stamp Duty and the additional charge when there is more than one residence owned at the time

SCOTTISH
LAND & BUILDINGS
TRANSACTION TAX

- New residence had to be acquired within a qualifying period of 18 months
- There was an “agreement in writing” between solicitors.
- But the court decided that this was not a “concluded bargain” in property law

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SDLT and "gardens"

- In Sexton & Sexton V HMRC it was argued for HMRC hat the separate communal garden which the occupants of a Kensington flat were entitled to use was not residential property as there was not enough of a "link" with the flat.

- But how does this reconcile with HMRC's long-standing view that separate gardens can indeed form part of a "main residence" for CGT purposes?

Hexagon Properties Ltd (TC 8468)

Compensation agreement regarding a bank miss-sold interest rate swap hedging product

- Debt was £5 million by the end
- After a long battle the bank accepted £1.5 million and agreed to write off the rest.
- Tribunal decide that the £3.5 million was not a taxable credit for the company as it was in effect damages as compensation for miss-selling

The Gunfleet Case

The first case for a long time on capital allowances and “preliminaries”

- Professional fees and design consultancy fees are frequently rejected for CA claims by HMRC

- But in this case the Tribunal decided that there was a direct relationship with the installation costs of the turbines and so allowed capital allowances
  - Indicates a relaxation of approach form the courts nowadays perhaps?

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Section 3: Some General Update points

HMRC is still doing *"secret shopper"* compliance checks?

In W Katpat V HMRC (TC8448) several visits were made to a restaurant

- *Indications were that takings were being deliberately suppressed… some of the test meals were not recorded at all.*
- Very poor records, no cash register!
- Invoices had been "blown away"????
- The taxpayer lost, BUT .. The Tribunal reinforced the long-standing view that HMRC has to prove its case by reference to clear evidence of excess spending or saving

Extended CT loss carry backs – to claim or not to claim?

- 3 year carry back is available for accounting periods ending between 01/04/20 and 31/03/22
  - Companies can still claim under the 1 year carry back or under the new 3 year carry back regime
- But – cash flow or extra tax relief?
  - Carry forward to 2023 for relief at 25% may be preferable for some clients?

Tax Conditionality checks

Do we act for someone who operates under a license granted by the local authority?

- Taxis etc?
- Scrap metal merchants

- The authorities have to certify eligibility for renewal - *are the clients up to date with their tax affairs?*

If not this could have a severe impact on their ability to work!

Multiple Completion on Buybacks of shares

- HMRC is now rejecting these types of sale contract.
- It argues that there is a series of sales not just one with deferred completions
- This means that the "connected" condition cannot be met except for the final completion.

➢ Essential to get clearance in all POS cases in the future.

Online CGT Reporting

- The deadline is now 60 days – from completion date
- Not all clients/taxpayers are able to report online.
- Paper forms have always been available on request – But – HMRC has now made these forms available online – at last…..on a trial basis.

  - See CH Manual CG-APP18-110 for HMRC's view on when the paper forms should be used.

Online Compliance Statement Reporting

- From 31st January 2023 companies and their tax agents now have to submit paperwork relating to EIS and SEIS shares using a new HMRC online service
- Advisers have to provide a copy of their authorisation to act
  - Signed and date within the last 3 months
  - With every submission they file.
  - Supporting documentation can also be filed at the same time.

Payrolling Benefits Reporting

- From 6th April 2023 all businesses that have made "informal" payrolling arrangements with HMRC in the past now have to do them formally.
- Businesses must register now to payroll their benefits for the 2023/24 tax year.
- Deadline for the 2022/23 tax year is 6/7/23
- Payrolling can be a useful simplification to the annual PA11D reporting compliance burden.

The economic crime levy (i)

There are four size bands:

- small (under £10.2m UK revenue)
- medium (£10.2m – £36m)
- large (£36m - £1bn)
- very large (over £1bn)

- All small entities will be exempt, whilst medium entities will pay £10,000; large entities £36,000; very large entities £250,000.

The economic crime levy (ii)

Businesses with turnover in excess of £10.2 million per annum

- AND are supervised by HMRC, CIOT or ATT
  - Required to register online for the ECL with HMRC.
- HMRC guidance now available online confirms that returns have to be filed and the levy paid by 30th September after financial year end.
- First payments due by 30/9/2023 for y/e 31/3/23

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Post Office Compensation?

- Normally in UK tax compensation payments are taxed if they are for:
  - ➢ Loss of profits
  - ➢ Business disturbance

- In this case however, where made in connection with the "Horizon" disputes and settlements…
  - Group Litigation payments and Overturned conviction payments are to be received tax free

CGT & Main Residence Changes

- Under new proposals a spouse who has left the family home on a separation will still be able to claim Main Residence Relief even if they sell it to someone other than their former spouse.

- AND – if a former spouse remains in the property again MRR will still be available to the leaving spouse on a future disposal if they share in the proceeds.

The Farmers' 5 year loss rule?

Mr N bought a farm with land of 75 acres

- Initially operated as an organic farm but later changed to non-organic.
- Initially he employed a manager.
- Losses arose for years 94/5 to 11/12
- HMRC refused loss relief.
- All the evidence showed the business was not "being run commercially" so loss relief was again refused.
- Case shows the importance of substantive evidence when fighting such claims.

Off payroll Working Rules from 2021

- So no abolition
- Responsibility for operating the rules remains with the organisation, agency or other third party engaging the worker
- Small organisations are exempt.
- This means two out of three of the following:
  - Turnover < £10.2m
  - Gross balance sheet assets < £5.1m
  - Fewer than 50 employees
- Where engager is small the IR35 rules are the same as they have always been.

Transfer Pricing

- Most of our clients will be eligible for the small company pricing
  - HMRC raised an additional £2 billion last year from TP Compliance Checks.
  - TP can apply in the UK as well as overseas.
  - Can apply between individuals as well as corporates.
  - We are likely to see more reviews when the new CT regime comes into force in 2023!

Uncertain Tax treatments?

For company, partnership, PAYE and Vat returns filed on or after 1/2/22

- A requirement to notify HMRC if a return includes an amount that is "uncertain".

- Only the very largest of UK businesses so unlikely affect our clients (Turnover > £200m and tax >£5m)
  - BUT – this may affect us if we act for a subsidiary of a much larger group of companies

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HMRC is ‘nudging’ businesses?

These letters are now being targeted at three specific business areas:-

- R & D Claims
- Business Asset Disposal Relief claims
- Property Lettings

- But are they a statutory obligation?
- Probably best not to ignore them

Section 4: Family Investment Companies

Family investment Companies (i)

- A means to pass on wealth down the generations;
- The ability to retain control whilst giving up beneficial ownership;
- Asset Protection.
- Protection against inheritance (IHT)
- Possibly some tax savings and deferral by using the company structure
- May facilitate more flexible control via differential shareholdings amongst family members.
- May lead to more tax efficient relief for interest on borrowings, no current restrictions as there are for the individual property investor.
- However pure investment companies may suffer higher rates of CT from April 2023 under the new regime.

Family investment Companies (ii)

- Often suggested as a means of reducing overall exposure to IHT

- Can facilitate staged transition of ownership gradually over a number of years
- May also facilitate reduction in capital gains by staged transfers over a number of years

Family investment Companies (iii)

Passing on tranches of shares:-

- Will require regular share valuations
- What sort of business is it?
  - Property rental = asset based valuations
  - Other investments = asset based valuations
  - Discounts for minority holdings are more difficult to justify in such situations = the value of the assets is the value of the company
    - But always seek expert advice for an expert share valuer

Section 5: Business Asset Disposal and Relief for the business client?

BADR (Entrepreneur’s Relief) (i)

- To give a 10% rate on £1million of lifetime gains now (Cut from March 2020)
- After 2 years ownership (1 years before April 2019!!!)
- 5% shares and an employee
  - Does not say full time employee!
- Must meet all conditions for the last twelve (24) months
  - Or can make an “associated disposal
  - Or with three years after cessation
  - There are restrictions for rents paid

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BADR (Entrepreneur’s) Relief (ii)

- A much less favourable regime than taper relief:-
  - Must dispose of *all or part of a business*, i.e. not just an asset of a business (as with Retirement Relief)
    - Gains apportioned between business and non-business parts of an asset
  - No relief for let agricultural land!

BADR (Entrepreneur's) Relief

- Gains attract a 10% rate of tax
- Gains can be relieved on more than one occasion cumulatively
- Associated disposals will mean assets in use for the purposes of a "Personal Co"

BADR (Entrepreneur's) Relief

Danger areas

- Does everyone work? Do they need to work?
- Do they own enough shares?
- Will there be a "business" disposal or an *asset sale?*
- Is rent being paid?
- Is it "part of a business"?
- Has there really been a cessation
- Has there just be a gap
- Do the right people own the assets?

BADR (Entrepreneur's) Relief

Danger areas

- Are they actually an employee/officer of the business?
- Make sure it's not an "investment business"
- Are there non-qualifying assets in the balance sheet?
- Are investments/cash > 20%
- Not always fatal if the other tests are met
- So – is it genuinely a trading business/company?
- *Trusts* – can qualify but only if there is a qualifying beneficiary and the trust carries on the trade as well.

BADR (Entrepreneur’s) Relief

Danger areas:-

- Post liquidation – disposals and capital distributions must be within 3 years of the cessation of the trade.
- Post cessation disposals – within 3 years of cessation of trading and don’t rent the property out if at all possible.

Section 6:
Some year-end tax planning points

Income tax (i)

- Remember expense claims
  - Forms P87
  - Professional fees etc
  - Also Possibly Capital allowances for the employee

- Maximise pension contributions
- Savings income – interest on directors' loan accounts?

Income tax (ii)

- Maximise annual savings allowances for Isa's etc. (£20,000)
- Look at pension contributions for children – stakeholder allowance?
- Consider timing of bonuses to employees
  - Earnings are taxed on receipt.

Income tax (iii)

- Look at payments that mitigate the abatement of personal allowances above £100,000
  - Pensions
  - Charitable donations etc.
- Review the HICB and income levels between spouses?
- Consider transfers of any unused married couples Allowances.

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Capital Gains Tax

- Use all the basic exemptions
  - Consider disposals from share portfolios
    - B&B still possible between spouses and/or Isa's
- Review ownership of assets with BADR in view.
- Review pension contributions that might reduce the CGT rate payable.

Inheritance Tax

- Use all the basic reliefs
  - Annual £3,000
  - Small Gifts Relief
  - PETS (but CGT?)
  - Trusts = hold-over-relief
  - Gifts on marriage?
- Review ownership of assets and review wills to ensure they are effective
- Consider gifts out of income.

Multiple Choice Questions to follow

- At the end of this section, you will need to answer the MCQs in order to get to your Certificate of Completion.
- If your course does not appear to be completed, you may need to re-address some of your answers

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