Talking Tax

DRIVING LIFELONG PROSPERITY

Winter 2023/24

TAX ILLUMINATED: SPOTLIGHT ON TAX

Welcome...

In this issue we summarise the main tax announcements from the Autumn Statement, and examine the proposed changes to the R&D tax incentives regime. We also highlight a potential VAT opportunity and look at the tax implications of sending employees abroad.

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AUTUMN STATEMENT: A BRIEF SUMMARY

R&D TAX RELIEF
Single merged scheme to go ahead from April 2024 as planned

EMPLOYEE'S CLASS 1 NIC
To be cut from 12% to 10% from 6 January 2024

SELF-EMPLOYED
- Class 2 NIC – to be scrapped from April 2024
- Class 4 NIC – to be reduced from 9% to 8% from April 2024

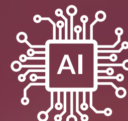
CAPITAL INVESTMENT
Full expensing on new and unused plant and machinery made permanent

NATIONAL LIVING WAGE
Increased by 9.8% from April 2024 to £11.44 per hour

BUSINESS RATES
- Small business multiplier to be frozen for a further year
- 75% discount for retail and hospitality businesses retained for 2024/25

ALCOHOL DUTIES
Frozen until 1 August 2024

PENSIONS
Ability for employees to port their existing pensions over when changing employer



AI INVESTMENT
£500 million pot for investment in supercomputing centres

SENDING EMPLOYEES OVERSEAS

What happens if your business needs to recruit staff living and working for you overseas, or relocate part of your workforce to foreign countries due to business demands, or to encourage staff retention?

Despite, or perhaps because of, the economic turmoil of the last three years, we have experienced a significant increase in enquiries from businesses seeking advice regarding their responsibilities if they employ a workforce overseas, either by direct recruitment, or relocation of existing UK staff to overseas jurisdictions.

PAYE

A common mistake, especially where existing employees are relocated, is to assume that PAYE is operated from the UK, as that is the source of the wages. Confusingly, it is actually the case that PAYE may need to be operated in part for UK employees relocating, but not at all for new recruits living and working entirely overseas.

TAXATION

Where an employee performs all of their duties overseas, their salaries are not taxable in the UK. For UK individuals transferred overseas, an NT 'No Tax' code must be applied for from HMRC. As the name suggests, this means that PAYE will not be deducted from their earnings.

The tax liability will instead be collected under local law. Most, if not all, EEA countries and G20 countries, as well as many others, will require a payroll scheme to be registered and operated where the duties are being performed, with tax being paid to the relevant authority in the local currency.

NATIONAL INSURANCE (SOCIAL SECURITY)

Social security is more complicated. Where there is a social security treaty between the UK and the relevant country, then for employees being relocated abroad, they may continue to pay national insurance (NIC) through a UK payroll, rather than local social security, usually for a maximum of two years. Evidence may be required by production to the local tax authority of an official document from HMRC.

Where an employee is being relocated, and there is no social security agreement in place, then it is mandatory to deduct NIC via UK payroll for 52 weeks, even if social security is also paid locally.

Where new employees are recruited in overseas territories, and they have not worked in the UK previously, social security will simply be paid locally, with no requirement for UK reporting.

HYBRID WORKING

The most difficult area is where work is performed in both the UK and overseas. Whilst there is a limited exemption for 'incidental duties', it may be the case that tax will be payable in more than one country. To prevent double taxation on the same earnings, it may be possible, with prior written agreement from HMRC, to only tax the UK element of hours worked, via the company payroll, or get credit for tax already deducted on the same amounts through a foreign scheme. Again, the charge to NIC is based on a different concept and separate consideration will be required on a case-by-case basis.

OTHER CONSIDERATIONS

There are non-tax issues the employer must consider, such as local employment law, holiday entitlement, right to work, pension contributions, attachment to earnings orders and student loan deductions, to name just a few. The employer must also review whether a permanent establishment has been created in the foreign country, and if so, separate corporate reporting will be required.

CASE STUDY EXAMPLE

UK Company Limited employs two skilled individuals, and due to increased business demands in Europe, they are asked to relocate to the continent. One is British and the other happens to be a national of the country in question. The assignment is expected to last two years. Both will pay their tax abroad, and a payroll will need to be operated under local rules. However, the British employee would rather pay UK NIC, but the local national chooses to pay social security in his home country, as he will one day return. Under joint UK/EU rules, this is allowed.

The same company is also to relocate a third British employee to an African country. There are no joint agreements in place, and it will be necessary to pay national insurance in the UK for a period of twelve months, even if there is an equivalent social security charge locally.

WHERE WE CAN HELP

Hazlewoods has an extensive network of international accountants and tax advisers, through our membership of the HLB network, which means we can provide advice in all the above matters, be it UK or overseas payroll responsibilities.

VAT RECOVERY ON EXEMPT SHARE SALES:

A closer look at the Hotel La Tour case.

The recent judgement in the Hotel La Tour case has cast a spotlight on the potential for VAT recovery on costs relating to exempt share sales. This case features Hotel La Tour Limited's (HLT) attempt to recover VAT on costs incurred from selling shares in its subsidiary to fund future business expansion. The key issue was whether such a VAT recovery was possible, given HMRC's initial stance that the sale of shares was an exempt supply, thus prohibiting VAT recovery on the associated costs.

Delving into the details, both the First-tier Tribunal (FTT) and the subsequent Upper Tribunal (UT) sided with HLT. They emphasised that the critical factor was the end-use of the proceeds from the share sale, not the exempt nature of the share sale itself. In HLT's case, the proceeds were allocated towards taxable business activities, making the VAT on the costs recoverable. This judgement diverges from HMRC's earlier position and introduces a nuanced perspective towards VAT recovery on exempt share sales.

Now, with a legally binding precedent set by the UT, an opportunity arises for businesses to file protective claims for input tax recovery on similar transactions. This is particularly relevant if the proceeds from such transactions were, or are intended for, taxable supplies and the costs are not embedded in the share price. This judgement encourages businesses to review past transactions, especially those within the last four years, to assess if they too have grounds for VAT recovery.

Although this judgement is subject to appeal by HMRC, it has momentarily provided a pathway for VAT recovery on exempt share sales. As the HMRC appeal unfolds, it would be prudent for businesses to consider filing protective claims, ensuring a favourable position should the appeal uphold the UT's stance.

Furthermore, for a successful claim, several key elements need to be observed based on the HLT case:

- **Purpose of proceeds:** the funds generated from the share sale should be earmarked for taxable activities.
- **Nature of costs:** the costs related to the share sale should not be components of the share price but should be business overheads or other business-related costs.
- **Documentation:** adequate documentary evidence supporting the use of proceeds towards taxable activities is crucial. This evidence could include financial statements, board meeting minutes, or other relevant documentation demonstrating the intended use of the funds.

The HLT case underscores the evolving landscape of VAT jurisprudence, emphasising the necessity for informed decision-making in this domain. Our specialist VAT team can help by providing the requisite guidance and support, ensuring that you are well-positioned in light of these developments.

R&D TAX REGIME – WHERE ARE WE?

As reported in our last issue of Talking Tax, a number of changes to R&D tax incentives were on the horizon. We recap on the key changes now that the rules have started to bed in, as well as look ahead to an even bigger overhaul from April 2024.

ADDITIONAL INFORMATION REQUIREMENTS

All R&D tax relief claims filed since 8 August 2023 now require an online Additional Information Form to be submitted with details of projects undertaken, a breakdown of the qualifying costs, the workers involved in R&D activities, as well as details of the agent who has helped to prepare the claim.

This form needs to be filed online prior to the submission of the company's corporation tax return including the R&D figures, otherwise HMRC will remove the R&D tax relief claim from the company's self-assessment tax return.

ADVANCE NOTIFICATION

Another key change to be aware of is that new claimants, as well as companies that have not claimed R&D tax relief in the last three calendar years, will need to notify HMRC within six months of the end of the accounting period in which R&D took place that they intend to make a claim.

This requirement is effective for any accounting periods beginning on or after 1 April 2023, so a company with a March year end, for example, would need to notify HMRC by 30 September 2024 of its intention to make an R&D claim for its year ending 31 March 2024 i.e. the advance R&D notification must be made at least six months before the statutory deadline for filing the corporation tax self-assessment return.

Businesses that have not made R&D claims previously or in recent years, will therefore need to review expenditure and R&D activities much earlier and take action, where appropriate, by completing a standardised claim notification form.

If advance notification is not given, the company will be precluded from filing an R&D claim for that period; therefore 'protective' advance notifications should also be considered if there is even a possibility of making a claim.

A 'SIMPLIFIED' SINGLE SCHEME

A consultation was released in January 2023 with proposals to move towards a single scheme of R&D tax incentives for both large companies and SMEs, similar to that of the current RDEC scheme (i.e. as an expenditure credit).

Following responses to the consultation, draft legislation was published in July 2023 along the same lines as previous proposals. Some changes to the existing RDEC scheme will be made, in particular to allow companies to claim payments made to subcontractors as part of an R&D project, as currently possible with the SME scheme.

Despite calls by professional accountancy and tax bodies and other stakeholders for a delay in introducing the new R&D scheme from the proposed date of 1 April 2024, the Chancellor only announced a very small concession on this in his 2023 Autumn Statement: rather than introducing the new scheme for R&D expenditure incurred on or after 1 April 2024, it will now instead apply for company accounting periods beginning on or after 1 April 2024. This will lead to the unusual position where R&D expenditure incurred after 1 April 2024 will attract different R&D tax incentives depending on the claimant company's year end.

The 2023 Autumn Statement announced that there will be some changes to the draft legislation previously published in July 2023, in order to address some points raised during the consultation process. In particular, changes will be made to determine the appropriate claimant when activities are subcontracted; it will be necessary to consider whether it is R&D activities that have been subcontracted or other services.

Given the radical nature of the overhaul of the R&D tax incentives, and the fact that some companies will start to be affected from April 2024, it is to be hoped that the new legislation will be finalised and made available as soon as possible, to allow time for companies and their advisers to assimilate the new rules.

RELIEF FOCUSED ON UK ACTIVITIES

One change which had originally been due to come into effect from April 2023 related to an exclusion of certain overseas expenditure from eligibility for R&D tax credits. At the 2023 Spring Budget, however, a 12-month delay was announced to allow the government to consider the impact of the new rules with a single R&D regime.

From April 2024 most costs incurred in the use of third-party overseas subcontractors and externally provided workers (EPWs) will no longer be qualifying unless it is necessary to undertake the R&D overseas and it would be unreasonable for the claimant company to replicate the required conditions in the UK.

HMRC ENQUIRIES

HMRC is continuing to place scrutiny on R&D tax relief claims in an attempt to capture any irregular and potentially fraudulent claims. The introduction of new filing requirements such as the Additional Information Form should help to flush these out further and so we do not expect HMRC enquiries into R&D tax relief claims to ease up in the short term; documents released alongside the Chancellor's Autumn Statement make it clear that this remains an area of particular focus for the government and HMRC.

If you are looking to make an R&D claim you should carefully consider whether you believe the company has genuinely undertaken projects aimed at achieving an advance in science or technology. We can help to guide you through this process and assist with making a claim, where appropriate.

ASSOCIATED COMPANIES AND TIMING OF TAX PAYMENTS

As highlighted in our last Talking Tax, new rules came in from April 2023 for groups, when determining the number of associated companies.

As a recap, the associated companies rules can impact on both the rate of corporation tax payable and the timing for settling liabilities.

In this article we focus on how the new definition can alter the payment date of a company's tax liabilities.

ASSOCIATED COMPANIES DEFINITION

From 1 April 2023, a company will be associated with another if, at any time in the chargeable accounting period (a) one company has control of another, or (b) both companies are under the control of the same person or group of persons.

This is an extension to the previous rules where, broadly, one company had to be a 51% subsidiary of the other or both companies had to be 51% subsidiaries of the same company. As a result, more companies may now be brought into account, particularly where they are under common control of the same individual or individuals.

There are some exemptions and exclusions where certain companies do not have to be treated as associated companies, including:

- dormant companies;
- passive holding companies (essentially with no activity other than receipt and distribution of dividends); and
- companies owned by associates of that person (or persons), providing the relationship between those companies is not one of 'substantial commercial interdependence'.

The final bullet point above allows for companies to be disregarded where, for example, spouses both separately own their own companies and there is no financial, economic or organisational interdependence between the two entities. Examples of interdependence which could lead to the companies being associated would include loans between the two businesses, common customers, complementary activities of which one company benefits the other and/or common employees, management team or sharing of premises and equipment.

QUARTERLY INSTALMENT PAYMENTS REGIME

A company is deemed to be large and required to make quarterly payments where it has taxable profits of at least £1.5 million. This threshold is, however, divided by the number of associated companies at the end of the last accounting period. A company will normally have a grace period for the first year it is deemed to be large unless its taxable profits for that year exceed £10 million divided by the number of associated companies, again at the end of the last accounting period (and the number of related group companies under the old definition for accounting periods beginning prior to 1 April 2023).

Accelerated instalment payments applies to 'very large' companies where taxable profits exceed £20 million, again divided by the number of associated companies at the end of the last period. There is no 'year of grace' provisions for companies moving into the 'very large' payment regime.

Under the new regime, taking a simple example of an individual separately holding 100% of the shares in two trading companies, they would both have had separate thresholds of £1.5 million and £20 million respectively for determining whether they fall within the instalments' regime. For accounting periods beginning on or after April 2023, however, each company would now be treated as large if its taxable profits exceed £750,000 and very large at the point they exceed £10 million.

The new associated companies definition could therefore result in many more companies finding themselves within the quarterly instalments regime and required to make tax payments much earlier.

Meet our team

A Q&A with Director in the Tax team, Gemma Read.

WHY DID YOU CHOOSE ACCOUNTING AND HOW DID IT COME ABOUT?

After finishing my degree in European Studies, I went on to do a postgraduate certificate in business, which was what first got me interested in the accountancy profession and, in particular, tax. I completed my ACA qualification at PwC in Manchester, before moving to the South West, where I joined the veterinary team at Hazlewoods in a mixed tax role, going on to complete my CTA qualification a few years later.

I spent a few years on the 'other side' of the fence, working in the group tax team of a large financial services firm, before returning to Hazlewoods in 2022. I really enjoy being client-facing and I find the variety of projects and challenges that working in practice brings really suits me.

WHAT IS YOUR ROLE AT HAZLEWOODS?

I head up the Owner Managed Business (OMB) tax team in the Cheltenham office, where we look after corporate, partnership and personal tax clients across a range of industries and sectors, undertaking a mix of compliance and advisory work.

WHAT DO YOU ENJOY MOST ABOUT YOUR ROLE?

For me, it's all about the people, both client-facing externally and team focused internally. In the OMB team we often advise both the business and the business owners across a range of taxes, and I really enjoy being able to provide that sort of holistic tax service that clients find so valuable.

WHAT CHALLENGES DO YOU HELP YOUR CLIENTS WITH?

What makes tax really interesting, but also incredibly challenging, is that it changes all the time! It is our job is to monitor changes in legislation and case law and then help our clients understand how those changes could affect them and any actions they need to take.

A big part of the role is helping clients navigate different stages in the lifecycle of their business, from start-ups needing advice on setting up a company, or remuneration strategies, through to established businesses considering succession planning or an exit.

CHALLENGES IN YOUR CURRENT WORK?

I am looking to grow the team, as the current SME market is huge and resourcing that is the challenge at the moment. As we have interesting clients and a good mix of compliance and advisory, I hope to attract some really good candidates to join our team. Drop me a line!

TELL US ABOUT WHAT YOU ENJOY OUTSIDE OF WORK

My young family keeps me pretty busy, but in my downtime I really enjoy reading and attend a monthly Book Club – although I have to admit to opting out if the choice is a thriller – I can't finish anything creepy!

MEET THE TAX PARTNERS

NICK HAINES
nick.haines@hazlewoods.co.uk

TOM WOODCOCK
tom.woodcock@hazlewoods.co.uk

PETER WOODALL
peter.woodall@hazlewoods.co.uk

DAVID CLIFT
david.clift@hazlewoods.co.uk

NICHOLAS SMAIL
nicholas.smail@hazlewoods.co.uk

JEMMA VAUGHAN
jemma.vaughan@hazlewoods.co.uk

BERNARDO ALMEIDA
bernardo.almeida@hazlewoods.co.uk

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Windsor House, Bayshill Road, Cheltenham, GL50 3AT
Tel. 01242 680000

www.hazlewoods.co.uk / @Hazlewoods_Tax

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