2016 AUTUMN NEWS

Evesham Office
19 Vine Mews
Vine Street
Evesham
Worcestershire
WR11 4RE

Tel: 01386 40220
Fax: 01386 40045

Wolverhampton Office
15/16 Bond Street
Wolverhampton
WV2 4AS

Tel 01902 428202
Mbl: 07831 877983

E: **paul@emsliebird.co.uk**
W: **www.emsliebird.co.uk**

Director
P S Bird FMAAT ATT(Fellow) FFA FFTA FIPA

Making tax digital

The Government has a vision of the future, in which all businesses and landlords interact with HMRC by electronic means only. Paper tax returns will be obsolete, and each business will provide HMRC with quarterly updates of its income and expenses.

This vision is called 'making tax digital', and HMRC thinks it will be up and running from 6 April 2018. Not all businesses will be dragged into the digital environment at the same time: companies will have until 2020 to prepare their systems for quarterly reporting.

Very small businesses, perhaps those with turnover under £10,000, won't have to make quarterly reports at all. The next tier of businesses will start quarterly reporting from April 2019, but we don't know what size of business will fall into that tier.

In order to supply the quarterly updates to HMRC, the taxpayer will have to use some form of accounting software. We can help you adjust if you are not already using specialist accounting software, or we may be able to take on the entire quarterly reporting process on your behalf.

HMRC envisage that the quarterly reported accounts data will feed into an online tax account for each taxpayer, which can be accessed at any time to check what tax is due or repayable. We should be able to view your digital tax account on your behalf as well.

HMRC is consulting on many questions concerning its digital dream. We should have a better idea of where this is all leading after the Autumn Statement on 23 November 2016. In the meantime, let's discuss how we can convert your accounting records into a digital format. ●

Property gains taxed as income

Overseas investors who buy UK residential properties only pay UK tax on the gains accrued since 6 April 2015, and they pay no UK tax on the gains made from selling UK commercial properties. This gives them a big tax advantage over UK-based investors.

The Government has plugged this tax gap for property sales made on and after 5 July 2016, but in the process it has created a risk of higher taxes for many UK-based property investors.

Property developers or dealers (as opposed to landlords) pay Income Tax (at 20%, 40% or 45%) or Corporation Tax (at 20%) on the profits they make from selling or letting their properties. Individual landlords pay Income Tax on the net rental income they receive, and Capital Gains Tax (CGT – generally at 20% or 28%) on the gains they make when they sell their properties.

The new law treats all landlords as property developers, if HMRC can show that one of the main drivers for buying the property was to make a gain when it is sold. This means the tax they pay on gains will be at the higher Income Tax rates, not the lower CGT rates.

In practice, HMRC will have to assert that the landlord had an eye on the future gain when he bought a property to let out. If challenged, the landlord will have to disprove that assertion. This may be difficult to do when the property has been held for a relatively short period in a rising market.

As yet there is no official HMRC guidance on the circumstances in which it may seek to apply this new law. For now, be cautious of buying properties to make a quick gain, as the tax payable may be higher than you expect. Please discuss your plans to develop or sell property with us before the event, so we can help you budget for the tax due. ●

Union Customs Code

If you import or export goods, you need to be aware of the new Union Customs Code (UCC) which came into effect across the EU on 1 May 2016.

The most important change is the requirement to provide a financial guarantee (known as a security) to HMRC for the potential customs duty due. Businesses who hold Authorised Economic Operator (AEO) status do not have to provide that guarantee. Also under the UCC, shipments for AEO businesses are given priority clearance, so fewer customs inspections are required.

The AEO is a 'trusted trader' status. It already exists, but in the past not many businesses have bothered to apply. It will now be worthwhile applying for AEO status.

If you already hold AEO status that authorisation will remain in place until its expiry date, which is normally three years from the date it was granted. ●

Sorting out VAT on food sales

All café and take-away owners need to be clear about the VAT treatment of the food they sell; whether each item should be zero-rated or standard rated (20% VAT). Zero-rating only applies to sales of cold take-away food such as sandwiches and cakes, although there are exceptions: fizzy drinks, bottled water, ice creams, crisps and chocolates are standard rated as confectionery.

Any mistakes made in recording the VAT category will result in an incorrect VAT return.

HMRC will review the proportion of zero and standard rated sales reported on VAT returns, and they may carry out an unannounced observation if the zero-rated sales appear too high. Where the observed sales are not in line with the VAT return the HMRC officer will issue a VAT assessment and possibly a penalty.

To avoid such difficulties, keep all your till rolls and z-readings as evidence to support the declared split between the two rates of VAT. Train your staff in correct till procedures and make sure they understand which products are zero or standard rated. Consider investing in a computerised till that has a button for each product, and which automatically calculates the VAT due on that product.

We can also help review your sales each quarter to see if the figures are consistent from period to period, and investigate any variations. ●

Stamp duty land tax problem

The block on deducting interest and finance charges from residential rents for income tax purposes (introduced from April 2017), won't apply to companies. For this reason, many landlords are looking at incorporating their property lettings businesses.

However, the big hurdle is the Stamp Duty Land Tax (SDLT) which is payable by the company when it acquires ownership of the properties. The SDLT rates start at 3% of the property value, progressing to 15% for properties worth £1.5m or more. The same rates apply for properties in Scotland subject to Land and Buildings Transaction Tax (LBTT), but from different valuation thresholds.

Lower rates of SDLT or LBTT apply when the transfer is of mixed residential and non-residential property, such as flats above commercial premises, or a workshop and house sold together.

It is possible to reduce the total SDLT bill where six or more residential properties are transferred in one transaction. The vendor pays SDLT based on the average value of the properties, rather than the individual values.

The SDLT can be reduced to nil in some cases where the property lettings business was operated through a genuine partnership made up of individuals. If those partners control the shares in the company which acquires the properties, the value of the properties transferred may be treated as nil for SDLT purposes, so that no SDLT is due.

Specialist advice should always be taken when transferring multiple properties in one transaction. ●

Tax on savings

Savings income includes all types of interest from banks and companies, and payments from insurance bonds, but not dividends. It is not easy to work out what tax rate your savings are taxed at.

Banks no longer deduct tax from the interest you receive, but if a company pays you interest, say on money it owes you, the company will deduct tax at 20%.

Where your savings income is covered by your savings allowance, personal allowance or your savings rate band, it is taxed at 0%. In that case, there is no tax to pay and you can reclaim any tax which has been deducted from that income. Any savings income not covered by those allowances is taxed at your marginal income tax rate: 20%, 40% or 45%.

The savings rate band is a maximum of £5,000, but non-savings income (salary, pension, profits and rent) eats into that. So if you have non-savings income in excess of your personal allowance (£11,000 for 2016/17) your savings rate band is reduced.

The level of your savings allowance is determined by the amount of your net taxable income after deduction of your personal allowance.

Taxable income	Savings allowance
Up to £32,000	£1,000
No more than £150,000	£500
Over £150,000	Nil

You can expand your taxable income threshold by making gift aid donations or personal pension contributions, which can give you access to a large savings allowance. ●

Example

Colin has a net taxable income of £32,050 including interest of £1,000, so he has a savings allowance of £500. The first £500 of his interest is taxed at 0%, and the next £500 of interest is taxed at 20%. So Colin pays tax of £100 on his savings income.

Colin makes a gift aid donation of £40 net (£50 gross) within 2016/17, so his net taxable income threshold is now £32,050. As his taxable net income now lies within that threshold, his savings allowance is set at £1,000. All of Colin's interest is covered by his savings allowance and he pays no tax on that interest. By making a gift aid donation of £40, Colin has reduced his tax bill by £100.

CGT relief on incorporation

There are still strong commercial reasons for incorporating a business, such as securing limited liability. A company can smooth an income stream over a number of tax years, thus reducing any spikes into high tax bands, and pay pension contributions in a tax-efficient manner.

Where an established business has built up significant goodwill, or holds valuable property, taxable gains will arise on incorporation of that business. Those gains are taxed at 20%, or at 28% where residential property is transferred to the company. You may be happy to pay CGT at 20%, and allow the company to pay you the balance of the sale price over a number of years with no further tax to pay.

If your business is trading rather than property-based, entrepreneurs' relief can apply to some or all of the gains on incorporation, in which case the tax on gains is payable at 10%.

Entrepreneurs' relief can be claimed when goodwill is transferred to a company, as long as the vendor of the business ends up holding no more than 5% of the new company's shares. Any shares held by individuals connected with the vendor are ignored, which allows the business to be incorporated as part of a family succession plan.

Where your trading business is incorporated as part of an arrangement to sell the new company to a third party, entrepreneurs' relief can generally be claimed on all the gains. The new company must be sold within 28 days of the incorporation.

If you have incorporated your sole-trader business or partnership since 3 December 2014, we should review the tax payable on any gains as the tax rules have been changed retrospectively back to that date. ●

Use EIS to defer and reduce CGT

Many landlords are looking to sell part of their residential property portfolios in order to reduce the burden of non-deductible interest from 6 April 2017. The deduction for interest paid will be replaced by a 20% tax credit, but this will mean highly geared lettings businesses may run at a loss.

However, paying Capital Gains Tax (CGT) at 28% is a big disincentive to sell properties. One solution is to invest the gains made in Enterprise Investment Scheme (EIS) shares. Where all the conditions are met by the EIS company and by the investor, the reinvested gain is deferred while the EIS shares are held.

You are not required to hold the EIS shares for any minimum period to achieve deferral of the gains. But if you also want to take advantage of 30% Income Tax relief on your EIS investment you must hold the shares for at least three years.

When you dispose of your EIS shares the deferred gain becomes taxable at the general rates of CGT applicable at that time. Crucially, as it is the gain which is deferred, not the disposal of the residential property, the deferred gain becomes charged to CGT at 20% not at 28%, assuming today's tax rates apply at that time.

You must subscribe for EIS shares within a four-year window which starts exactly 12 months before the day on which you make the gains. There is no limit on the amount of gain you can reinvest in EIS shares in order to achieve deferral.

There can be a delay between subscribing for EIS shares and receiving the EIS3 certificate, which you must submit to HMRC to claim the tax relief. Ask the EIS company about anticipated delays before you invest, as a significant delay in issuing EIS certificates can mean you need to pay the CGT before you can submit a claim for a deferral of that tax.

Specialist investment advice should always be taken before investing in EIS shares as they represent a risky asset class. ●

Avoid an ESL penalty

An EC Sales List (ESL) must be completed by businesses who sell any goods or services to businesses in other EU countries.

The ESL is generally required to be submitted each quarter, but large businesses may submit them monthly, and those on the annual accounting scheme can apply to submit an annual ESL. In every case an electronic ESL must be submitted within 21 days of the end of the period, or 14 days for the paper version of the form. HMRC can levy penalties for late ESLs, but normally they issue a warning first. Once on HMRC's radar for late submission the penalty is £5 per day, rising to £15 per day when you have submitted three or more late ESLs in a year. The penalty is capped at 100 days.

If you make a mistake in your ESL you can make a correction within 21 days of submitting the ESL. Other errors can be corrected on form VAT101B. If HMRC discover the error before you do, they will send a polite warning letter. A second or subsequent error will trigger a penalty of £100. ●

NI number validation

Have any of your new employees presented with a National Insurance number containing the prefix 'KC'? The Department of Work and Pensions has been issuing these NI numbers since June but the Real Time Information (RTI) computer at HMRC doesn't recognise KC prefixed numbers as valid.

The computer will be reprogrammed shortly, but in the meantime, when completing your RTI submissions, you should leave the NI number field blank and complete the employee address field. Don't request a new NI number for your employee, but continue to apply the PAYE code for that person as normal. ●

Supporting a student with dividends

Funding your child through university is very expensive, but if you control your own company you can use your shares to provide the student with £5,000 of tax-free income per year. If the student doesn't have any other income they could receive up to £43,000 in dividends and pay tax at 7.5% on £27,000.

This income stream can only be achieved if the student holds sufficient shares on which dividends can be paid. Step one is to check what shares the company has issued, and if necessary sub-divide the shares or have the company issue more shares.

You may transfer some of your shares directly to the student (who must be aged 18 or over), or into a trust for the student. The gift should also be evidenced by a letter saying it is made as part of their 'parental love and affection' for the student. Those gifted shares may be relabelled as, say, 'B' shares, so a different rate of dividend may be paid on them.

Any capital gains arising on the gift of shares can be held over where the company is trading. The gift should also be covered by business property relief for Inheritance Tax. If your company is a non-trading investment company, a different strategy may be needed.

When the student graduates from university, you or the company could buy back the shares from the student. Alternatively, the graduate could gift their shares to the next sibling who is due to attend university.

The student must understand the nature of the dividend income they receive as it will have to be declared when claiming any refund of PAYE from a part-time job. ●

Investors' relief rules relaxed

When you subscribe for shares in an unquoted trading company, investors' relief can reduce the tax due on disposal of those shares to just 10%.

This relief was introduced on 16 March 2016, and it only applies to shares issued after that date. At first the relief excluded many investors, but the rules have now been relaxed.

You still need to be unconnected with the company at the time you subscribe for the shares, but you can become an employee of the company six months or more after that date. You mustn't be offered a job with the company when you subscribe.

You are permitted to become an unpaid director of the company, and hence influence the running of the company, and you may be reimbursed any reasonable expenses you incur while performing your duties as a director.

However, you mustn't extract value from the company other than as rent or interest paid on a commercial basis, so borrowing from the company is strictly prohibited.

Although the company must not be listed on a recognised stock exchange at the time you subscribe, it can become listed later. This means you can cash-in on an Initial Public Offering (IPO) made by the company, and pay only 10% tax on your gains if you have held the shares for at least a three year period which starts no earlier than 6 April 2016.

There are other complex conditions which may apply if the company is taken over at any point. ●

Sign-in online for tax refund

Every year HMRC reconciles the tax position for employees and pensioners who are taxed under PAYE. If a tax refund is due, or more tax is payable, this is reported to you on a form P800.

HMRC wants to send any tax refund due by electronic transfer straight to your bank account. But to do that HMRC needs you to confirm your bank details. HMRC will never ask for this information by email or text, so be careful not to click on any emails that pretend to take you to a link to do this.

You can provide your bank details by ringing HMRC – see the contact number on the paper form P800, or by signing into your personal tax account, at www.gov.uk/personal-tax-account. This requires you to go through a two-step security process.

If you take no action for 45 days after receiving the P800 form, your tax refund will be issued to you as a cheque. If we are authorised to receive the tax refund on your behalf, you won't be able to use the online tax refund service. ●

Paying HMRC without penalty

Paying your taxes should be easier now that HMRC accepts funds transferred through the Faster Payments System (FPS). This means you can pay your tax on any day of the year, 24 hours a day, if your banking allows that.

It's worth checking the maximum value your bank permits for an FPS transaction as this can be as low as £10,000 for certain business accounts. Also check exactly when the bank will process the FPS transaction, as some banks won't accept advance payments to be made on a weekend.

If you have a large tax payment coming up, such as VAT, the payment will fail if your bank's FPS limits are not sufficient, even if you have the cash available in your account. A failure to pay VAT on time can generate a penalty of between 2% and 15% of the late paid VAT, even if the payment arrives with HMRC only one day late.

When you need to pay HMRC from an overseas bank account, you must give the International Bank Account Number (IBAN) and bank identifier code for the HMRC bank account. See gov.uk for details. But be careful to pick up the IBAN for the bank account specific to the tax you are paying, as there are different accounts for different taxes. ●

VAT and online markets

UK traders who sell online often complain about being undercut by overseas traders who don't charge VAT on goods sold to UK customers. If the goods sold by the overseas business are stored within the UK at the point of sale, UK VAT must be charged.

There is no VAT threshold for such overseas traders. If they don't have a place of business in the UK (a warehouse doesn't count), VAT must be charged on every sale.

This rule has always applied, but it has not been enforced effectively.

The Government is cracking down on such VAT evasion, but the cure may catch out UK businesses who run online marketplaces. From 15 September 2016 an online marketplace can be held jointly and severally liable for VAT which remains unpaid by an overseas business that sells goods through that marketplace.

If you host or run an online marketplace you should take steps to determine where your participating sellers are based. Those traders who are based outside of the UK must register for VAT, and you need to ask for evidence of that VAT registration.

If HMRC suspect that an overseas trader is not charging VAT, and HMRC get no response from that business, they will send you a 30-day warning notice. This gives you time to take action against the errant trader, either to secure the VAT due, or ban the trader from your marketplace. ●

VAT flat-rate scheme

Many small businesses can save time by using the VAT flat-rate scheme. You may even make money out of the scheme if the flat-rate percentage applicable to your trade sector is particularly favourable for your business.

The tricky bit is picking the right trade sector for your business. Use normal English to describe what your business does and compare this to the HMRC guidance to work out which trade sector is the best fit. We can help you with that.

If your business activities fall into more than one sector, say, computer and IT consultancy (flat rate 14.5%), as well as publishing (flat rate 11%), you should judge which sector covers the majority of your sales (by value) and use the flat rate applicable to that trade sector.

Once within the flat-rate scheme you should review your choice of trade sector on the anniversary of the date on which you started to use the scheme. Estimate the value of sales which will fall in each trade sector, and pick the appropriate flat-rate percentage to use for the following year.

If you cease one or more business activities completely, this may mean the balance of your activities shifts, so that a different trade sector is the best fit for your business. In that case, use the new flat-rate percentage from the date the business activities changed, until the next anniversary of joining the flat-rate scheme.

Whenever you change the flat-rate percentage used, you should tell HMRC within 30 days of the date you changed and why you made that change. We can do this for you. ●

This newsletter is written for the benefit of our clients. Further advice should be obtained before any action is taken.