Technical CONNECTION

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THE SPRING STATEMENT

The Spring Statement date has been announced as Wednesday 13 March.

This Spring Statement date falls before Britain's withdrawal from the EU - 29 March (at least at the time of writing!).

Philip Hammond has announced that the Government will use this Spring Statement to respond to the forecast from the Office for Budget Responsibility (OBR).

Following the Chancellor's announcement at Autumn Statement 2016, there will now only be one major fiscal event each year, in the Autumn.

However, the contents of this year's Spring Statement could well be influenced by developments in relation to Britain's withdrawal from the EU.

WELSH INCOME TAX RATES SET

The National Assembly for Wales has now set the rates of income tax in Wales for 2019/20.

Welsh rates of income tax will be charged on the non-savings and non-dividend income of those defined as Welsh taxpayers. Savings income and dividend income arising to Welsh taxpayers will still be taxed at the appropriate UK rate.

The rate paid by Welsh taxpayers on non-savings and non-dividend income will be calculated by reducing the basic, higher and additional rates of income tax levied by the UK

Government by 10 pence in the pound and adding new Welsh rates proposed by the Welsh Government and set by the National Assembly for Wales.

On 15 January the National Assembly for Wales agreed to set each of these three rates at 10% for the tax year 2019/20 - ie. no divergence from the rates in the rest of the UK (apart, of course, from Scotland.)

THE DISGUISED REMUNERATION LOAN CHARGE

There has been some comment in the financial news recently on the subject of the (so-called) loan charge about to be levied on a great number of still outstanding / written off favourable terms loans from employers to employees.

In December the Lords' Economic Affairs Committee urged a Government re-think. On 8 January, an amendment was tabled to the Finance Bill by Liberal Democrat MP, Edward Davey, requiring the Treasury to re-assess the likely effects of the loan charge policy before it comes into force, and to present its report to Parliament by 30 March. However, this amendment to the Finance Bill will not necessarily lead to any changes to the law relating to the loan charge and its application from 5 April 2019. The position on the loan charge is therefore likely to remain as it is, the relevant facts of the charge being as set out below.

The loan charge

The loan charge for disguised remuneration loans arises on 5 April 2019. The loan charge will need to be paid for any loan from 6 April 1999 that:

- was received through a disguised remuneration tax avoidance scheme; and
- is still outstanding on 5 April 2019.

Those affected by the loan charge may have been able to postpone the date on which it needs to be paid to HMRC by having applied for postponement but this needed to be done by 31 December 2018.

According to the Financial Times, HMRC is aware of 50,000 workers — including contractors, agency staff, supply teachers and nurses — who have used disguised remuneration schemes to cut their income tax and National Insurance bills. However, HMRC said in November that fewer than half had set up formal repayment plans ahead of the 5 April 2019 deadline, leaving them liable for a significant tax charge.

Typically, disguised remuneration schemes involve an employer paying an employee indirectly through a third-party, often in the form of an offshore trust. Rather than paying a salary, which would attract income tax and National Insurance contributions, employees are loaned money by the trust on terms that mean the loan is unlikely ever to be repaid. At the 2016 Budget, the Government announced it would apply a tax charge to any outstanding disguised remuneration loans by April 2019. Loans made to individuals since 6 April 1999 are in scope meaning that, in some cases, two decades' worth of tax bills could be owed.

All of this is a result of legislation stemming from the 2017 Finance Act whereby any pre-existing loans (dating back to 6 April 1999) which are still outstanding on 5 April 2019 will be potentially caught - this means that the outstanding amount of the loan and/or the amount of loan that has already been written off, will be considered employment income for the 2018/19 tax year, resulting in income tax for the employee and National Insurance contributions for both the employee and employer. For the unprepared this could be a large and unexpected liability.

As noted above, HMRC is aware of around 50,000 workers who may have used such arrangements, half of whom may be affected by this change and have not already set up repayment plans.

HMRC says that its new penalties can still be avoided provided a settlement is made before 6 April 2019. This can still be done even though the postponement option has expired.

Instalment plans are available to spread payments. Payments can be spread for up to 7 years if current year taxable income is less than £30,000. If current year taxable income is less than £50,000 payments can be spread for up to 5 years.

COMMENT

It's worth noting, in all of this, that legislation to combat perceived tax avoidance through "disguised remuneration" has been in place since 2011 - one common result was to bring arrangements which replaced salary with an interest-free loan (that might never be repaid) made to an employee by a third party (such as an employee benefit trust) into the charge to employment tax and National Insurance contributions. Since then, HMRC has used a number of measures to encourage settlement of any outstanding arrangements.

Although often considered as tax planning for the wealthy, given the range of schemes that were put in place these do not just affect higher paid workers, but also agency staff including teachers and NHS workers.

HMRC maintains it has always considered schemes, such as employee benefit trusts, to be tax avoidance, although people affected have expressed anger at what they view as a retrospective change to the law, amid concerns about the significant bills they face.

Also, as mentioned earlier, anyone with outstanding disguised remuneration loans who has not made arrangements with HMRC by the 5 April 2019 deadline could have tax levied on loans dating as far back as 6 April 1999 and could potentially face paying up to two decades' worth of income tax in a single tax year.

In a further twist, according to the Financial Times, HMRC has admitted that around 60 per cent of people who have sent the information needed to work out how much tax is owed from their participation in disguised remuneration schemes, have not yet received calculations from the authority. And according to the Financial Times a HMRC spokesperson has confirmed: "Where agreement has not been reached with a customer by 5 April 2019, HMRC will consider carefully whether or not to extend settlement under the existing terms. Each case will be considered on its own merits, and factors include whether or not the customer has met all HMRC's deadlines and responded promptly to any queries and correspondence from us. If a customer has not been able to settle by 5 April solely because of error or delay on HMRC's part, we will ensure that the customer is not disadvantaged."

TRUST TAXATION CONSULTATION – DEADLINE EXTENDED

On 7 November, after a long wait since its coming was announced in the Autumn Budget of 2017, the consultation document, "The Taxation of Trusts: A review", was published.

The consultation looks at the implementation of simplicity, transparency and fairness within various aspects of trusts, including transparency in relation to non-resident trusts, and the Government's interest in simplifying the approach to taxation for vulnerable beneficiary trusts, as well as other aspects of trust taxation that might warrant simplification.

The initial closing date for comments was 30 January. However, HMRC has now extended the closing date for responses to 28 February 2019.

IS YOURS A REASONABLE OR BIZARRE EXCUSE FOR LATE-FILING?

While HMRC will accept late filing for cases where an individual has a reasonable excuse, for example an illness, it appears that the excuses for late filing are becoming more bizarre than ever as reported by HMRC in a Press Release dated 18 January.

Below are some of the strangest excuses from the past year which we are sure will bring a smile to your face!

1. My mother-in-law is a witch and put a curse on me

2. I'm too short to reach the post box

3. I was just too busy – my first maid left, my second maid stole from me, and my third maid was very slow to learn

4. Our junior member of staff registered our client in Self Assessment by mistake because they were not wearing their glasses

5. My boiler had broken and my fingers were too cold to type

Even if a reasonable excuse is established, the taxpayer is expected to file without unreasonable delay once the excuse has ceased.

As well as unbelievable excuses, every year HMRC also receive some dubious expenses claims for unconvincing items like woolly underwear, family holidays and pet insurance for a dog.

OTS CALL TO SIMPLIFY TAX RELIEF ON BUSINESS ASSETS – THE CHANCELLOR'S RESPONSE

Three main ideas put forward by the Office of Tax Simplification (OTS) in June 2018 in its suggestions for the simplification of the current capital allowances system were:

1. Accounts-based capital allowances - the categories of assets disclosed in the accounts could be replicated for capital allowances and prescribed writing down rates applied. The OTS also floated the idea of a more radical approach based wholly on accounting asset lives, such as in the table below:

	Writing down rate, based on accounting asset life		
Any business asset recorded in the accounts (not land, not dwellings)	<5 years	5-25 years	>25 years

2. Widen the Annual Investment Allowance (AIA).

3. Full scope capital allowances - broadening the capital allowances system to encompass all assets used in a business.

Recently the Chancellor responded to the OTS, thanking them for their review, pointing to the new Structures and Buildings Allowance (SBA) introduced in the Autumn Budget, and committing HMRC and HM Treasury to continue considering the scope for further capital allowances simplification.

The AIA was also increased in the Autumn Budget, albeit temporarily, to £1,000,000 from 1 January 2019 for two years. It will revert to £200,000 on 1 January 2021.

The draft legislation for the new SBA is included in the Finance Bill currently going through Parliament. It allows for a 2% annual allowance where expenditure has been incurred, on or after 29 October 2018, on the construction of a building, the building is in qualifying use and the expenditure incurred on the construction of the building, or other expenditure, is qualifying expenditure.

However, the Government has decided to legislate for it in a way that means that consultation will continue on the details of how it will be applied.

Indeed, the Government's original Technical Note from the Budget was subject to consultation until 31 January. And a draft of proposed secondary legislation on the new allowance will be consulted on over the winter, ahead of this being laid before Parliament after Royal Assent is granted to the Finance Bill.

HMRC PUBLISHES GMP CONVERSION AND EQUALISATION GUIDANCE

HMRC has republished its guidance on the conversion and equalisation of GMPs.

The legislative requirements for GMPs can give rise to a difference in treatment between men and women which schemes are required to address in accordance with their equal treatment obligations. The difference is due to :

- the different ages at which men and women are entitled to receive their GMPs

- the different rates at which the GMP accrues for men and women

- the fact that schemes often provided for different rates of revaluation and/or indexation on the part of the pension underpinned by the GMP and benefits above the GMP

Conversion can be used as part of a process by which schemes can remove any inequality between men and women resulting from the GMP rules.

They suggest/remind of one method of equalisation which was first published in 2016 in the draft Occupational Pension Schemes and Social Security Contracted out and Graduated Retirement Benefit regulations.

The proposed method involves a one-off calculation and actuarial comparison of the benefits a man and woman would have, with the greater of the two converted into an ordinary scheme benefit under sections 24A to 24H of the Pension Schemes Act 1993.

Ultimately, schemes may choose this methodology or another. The onus lies with each scheme to take their own legal advice when considering and undertaking equalisation.

ISA MANAGER BULLETIN NO 78

On 23 January HMRC published the latest ISA manager bulletin number 78.

Amongst other topics the bulletin reminds Lifetime ISA providers of their IT requirements, provides details on how to apply for ISA manager approval, reminds ISA managers what statistical information needs to be reported to HMRC, and confirms that the Junior ISA limit will increase to £4,368 from 6 April 2019.

However, of particular interest the bulletin covers the implication of changes to financial services passporting for ISA managers and the use of e-money wallets for holding ISA subscriptions.

Passporting

Broadly, in the event that the UK leaves the EU without agreement, there will be changes for ISA managers based in the European Economic Area (EEA).

The Government has previously announced that, if necessary, it would introduce a temporary permissions regime for inbound passporting EEA firms and funds. This would enable relevant firms and funds which passport into the UK to continue to operate in the UK if the passporting regime ends when the UK leaves the EU.

In order for financial services firms to prepare for this, the Financial Conduct Authority has published guidance which includes information about the temporary permissions regime.

Use of e-money wallets

HMRC is aware that some ISA managers have arrangements in place with e-money and e-wallet providers to receive and hold investor subscriptions pending investment.

ISA regulation 6(4) states that cash subscriptions and other cash held by an ISA account manager must be deposited in an account with a deposit taker as defined in section 853 Income Tax Act 2007.

Basically, the account with a deposit taker has to be designated as an ISA account for the purposes of the ISA regulations and it should be in the name of the investor. For this reason, HMRC does not consider subscriptions held in e-money wallets meet these requirements.

ISA managers who hold ISA funds with e-money providers should email HMRC.

PENSION SCHEMES NEWSLETTER 106 – JANUARY 2019

HMRC Pension Schemes Newsletter 106 covers the following:

- Pension flexibility statistics
- Lifetime allowance for 2019/2020
- Reporting non-taxable death benefits
- Changes to HMRC email addresses
- Guaranteed Minimum Pension (GMP)
- Relief at source – January 2019 notification of residency status reports
- Relief at source – annual return of information declaration
- Change of name for the Manage and Register Pension Schemes service
- Master trusts

Issues of particular interest

Pension Flexible Statistics

From 1 October 2018 to 31 December 2018 HMRC processed the following number of forms:

- P55 = 7,770
- P53Z = 4,537
- P50Z = 1,685

Total value of income tax repaid: £30,242,426

Reporting non-taxable death benefits through RTI

HMRC has confirmed that previous guidance given in newsletter 104 and 105 was incorrect.

The correct information should have said that when reporting death benefits that are entirely non-taxable, the starting date field should be blank when the scheme administrator submits their FPS. For these payments the annual amount should be zero.

Those that used the previous guidance would have received an error. If you have any questions then please contact pensions.businessdelivery@hmrc.gsi.gov.uk and put ‘reporting non-taxable death benefits’ in the subject line of your email.

Changes to HMRC email addresses.

Email addresses previously ending in @hmrc.gsi.gov.uk, will be moving to @hmrc.gov.uk. For a while, after the change has been made, old email addresses will redirect.

Master trusts

A reminder that the application window closes on 31 March 2019 and that those who don't register by 31 March 2019 will by law have to cease and wind up the scheme and TPR may also impose financial penalties.

THE FUTURE OF THE UK'S FINANCIAL SERVICES SECTOR AFTER BREXIT

The Treasury Commons Select Committee is examining what the Government's financial services priorities should be when it negotiates the UK's future trading relationship with the EU and third countries, and will be taking evidence from industry, regulators, ministers and officials.

The Committee will also look at how the UK's financial services sector can take advantage of the UK's new trading environment with the rest of the world, and whether the UK should maintain the current regulatory barriers that apply to third countries.

Commenting on the launch of the inquiry, Rt Hon. Nicky Morgan MP, Chair of the Treasury Committee, said:

"The UK may converge, seek equivalence, or diverge from the EU. As part of our new inquiry, the Treasury Committee will examine the risks and rewards of each of these choices."

"We'll also explore the opportunities outside Brexit, such as FinTech, on which we should be capitalising."

"We'll also seek to conclude whether it would be in the long-term interests of the UK to align closely with EU financial rules, or to forgo financial services trade with the EU and pursue trade with other third countries."

There is no set deadline for the submission of written evidence to this inquiry. However, the submission page suggests written evidence should be submitted by 30 April 2019.

After taking evidence the Committee will make a series of recommendations to the Government and regulators about what they should prioritise in negotiations with the EU and the rest of the world.

INCOME WITHDRAWAL RATE FOR FEBRUARY 2019

The appropriate gilt yield, used to determine the 'relevant annuity rate' from HMRC's tables for an adult member commencing income withdrawals (or reaching an income withdrawal review date), in February 2019 is 1.5%.