Money Matters

Robin Oatridge & Co
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Making Tax Digital is coming

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Inside...

Closing loopholes around director loans

A recent First-Tier Tribunal decision has drawn attention to the tax treatment of writing off director loans.

Directors of owner-managed companies may overdraw their loan account as a result of regularly withdrawing funds from their company to cover their personal living expenses.

There are sometimes good reasons for simply waiving or releasing the debt, even though that is not necessarily the most tax-efficient approach to the issue.

Why write off?

Where a director who is also a shareholder has an outstanding loan or current account with a close company, the company will have to pay 32.5% in tax if the loan is outstanding for more than nine months after the end of the company's accounting period in which the loan was made.

Where the loan has been written-off, a director is treated as receiving a dividend equal to the amount written-off and dividend tax is paid at the marginal rate – up to 38.1%, depending on income. However, it is also treated as earnings for national insurance contributions, so the director pays 12% and/or 2%, with another 13.8% payable by the company.

Further, despite the earnings treatment, the company does not receive corporation tax relief for the write-off.

What not to do

The First-Tier Tribunal decision involved four companies that used a loan waiver scheme. In a bid to reduce their tax bill:

- The companies voted to issue the directors with performance bonuses, which were equivalent to the amount of overdrawn loan accounts.
- The bonuses were paid as a formal release of the overdrawn loan accounts.

The Tribunal decided that, because of the close links between bonuses and write-offs, the directors' loans had been repaid, rather than released, because the companies effectively got their money back. So, the write-offs should have been treated as employment income rather than dividend income – and the higher rates of income tax applied.

Please contact us if you would like advice on how to handle your director loans.

Intestacy and its consequences for business continuity

Over 30 million people in the UK don't have wills, but if you die intestate – without having made a will – there are strict rules about how it must be passed on.

Under intestacy law in England and Wales, your entire estate is passed on to your spouse or civil partner, if you have one and you don't have any children. In Northern Ireland and Scotland, if you don't have children, part of your estate might go to parents or siblings.

Unmarried partners have no rights under intestacy law, so it is very important to make a will if you have not married your significant other.

If you have children, including from previous relationships, things get more complicated. The rules vary across the UK but your spouse/partner generally gets a lump sum, certain chattels and a share of any remaining estate. The rest of the estate is generally split between any children.

If you die without a spouse/partner or children, your estate is passed to surviving relatives, depending on where you live in the UK. If you have no surviving family, your estate will pass to the Crown.

What about your business?

If you own an interest in a business, dying intestate can cause serious issues. Your estate will pass through probate, creating potential delays before it becomes clear who will inherit.

If you are a sole trader, your business will automatically cease to exist when you die. But if you are in a partnership or own shares in a limited company, you should ensure your partnership agreement or company articles set out clear guidelines for succession.

Without such provisions, your death could cause a partnership to dissolve or leave a company without a director and unable to appoint one. Your heirs may also be unable, or unwilling, to take part in the business they inherit.

It is important to prepare for the worst. Get in touch if you would like to discuss your options.

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Making Tax Digital starts to take shape

HMRC has updated the Making Tax Digital (MTD) programme and the April 2019 deadline is fast approaching for most VAT-registered businesses to submit their first VAT returns.

HMRC has provided important information about: the VAT pilot, which now includes property income; details of record-keeping requirements for taxpayers; and an updated list of software suppliers.

The pilot schemes

HMRC is currently piloting MTD for VAT and, looking further ahead, for income tax:

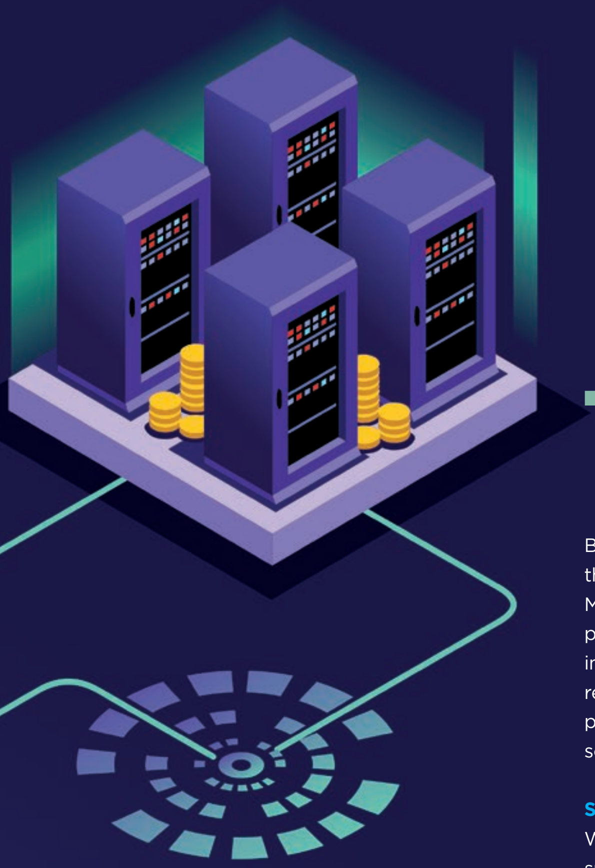
- **VAT (deadline 2019)** – Taxpayer participation in the pilot project is by invitation only and is voluntary. Once HMRC is satisfied that things are working as expected, it will allow businesses to join the pilot without an invite. The plan is to gradually increase the numbers and complexity of the participating businesses.

- **Income tax (deadline 2020)** – The pilot scheme is initially just open to sole traders with only one business, although this has recently been extended to landlords with simple tax affairs – but they are currently excluding furnished holiday lettings. Other groups of taxpayers will be brought in as new functionality is added. However, if you are thinking of joining, be warned there are only a few software products currently available.

Digital record-keeping

HMRC's detailed new digital record-keeping requirements were recently published in 'VAT Notice 700/22 Making Tax Digital for VAT'. Points of interest include:

- Taxpayers will have to retain some original copies of their records, such as C79 import VAT certificates – even if they store them digitally.



> “ *HMRC’s detailed new digital record-keeping requirements were recently published in ‘VAT Notice 700/22 Making Tax Digital for VAT’.*

- Data transfer between MTD VAT software or applications must use ‘digital links’. This means any exchange of data must be made electronically, for example via application programme interface (API) transfers or complete spreadsheets. Any manual intervention is ineligible, such as tax agents cutting and pasting information from one programme to another.

- There will be a ‘soft landing period’ for setting up digital links. These requirements will be relaxed and so, for example, cutting and pasting data will be allowed during VAT periods starting between 1 April 2019 and 31 March 2020.

- Some manual adjustment calculations may still be required. For instance, if you are using the flat rate or the capital goods schemes, or if partial exemption applies.

Businesses that use spreadsheets to maintain their VAT records can continue doing so under MTD. The software must be able to record and preserve digital records and provide HMRC with information and returns using data from those records via HMRC’s API. If your spreadsheet programme can’t do this, you must use ‘bridging software’ which will provide the link to HMRC.

Software suppliers

With the approaching VAT deadline, software suppliers have been concentrating their efforts on MTD for VAT. Around 150 suppliers are expected to have products ready for April 2019.

> You will be required to use MTD if your business or company is VAT-registered on 1 April 2019 and the taxable turnover is above the VAT threshold of £85,000. You will still have to use MTD if your turnover subsequently drops below the threshold. You will not have to use MTD if you have voluntarily registered for VAT with turnover below the threshold.

If your business is preparing for the April deadline, please let us know your plans so we can help you prepare.

Transforming remuneration in disguise

More controls on extracting company profits are on their way, with a new tax charge on disguised remuneration from next April.

Disguised remuneration schemes aim to avoid income tax and national insurance contributions by replacing remuneration with a loan or other payment from a third party, such as an employee benefit trust (EBT). The terms ensure that the loan is unlikely ever to be repaid.

The new tax charge will apply to all payments made to individuals through disguised remuneration loans since 6 April 1999, if they remain outstanding on 5 April 2019.

HMRC offered a chance to settle any liabilities under favourable terms but the deadline has passed. The only way of avoiding the charge now is to repay the loan.

Closing tax loopholes

HMRC is determined to stamp out tax avoidance on remuneration. A Supreme Court decision in July 2017 strengthened HMRC's hand by finding that a scheme used by Rangers Football Club did not work. HMRC considers that the same principle applies to a wide range of disguised remuneration schemes, including payments routed through employer-funded retirement benefit trusts.

Some scheme promoters claim that it is possible to avoid the loan charge by entering into new arrangements that may describe the loan as something else or provide untaxed funds to repay the loan. HMRC has said that none of these schemes work and it will bring the full force of the law down upon them.

> *HMRC has warned against using arrangements promoted by some umbrella companies and agencies that claim to reduce tax on remuneration.*

As well as the new legislation, HMRC will use the General Anti-Abuse Rule. This will allow it to charge a 60% penalty on transactions on or after 15 September 2016.

HMRC has also warned against using arrangements promoted by some umbrella companies and agencies that claim to reduce tax on remuneration. HMRC maintains that these arrangements are likely to result in additional tax, interest and perhaps penalties.

If you are worried that you might be caught up in a questionable scheme, you can bring all your documentation to us and we will advise.

From the ashes: Government cracks down on phoenixing

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The government is proposing to introduce fines and disqualifications for directors who allow their companies to go bust to avoid debts. The changes come after several high-profile company failures in 2018.

One aim of the new rules is to stop 'phoenixing', the practice of dissolving a company to escape debts and liabilities before starting a new, often similar, business under a new name.

Following a consultation in spring 2018, the government proposes measures to strengthen the insolvency framework:

- Ensuring greater accountability of directors in group companies when selling subsidiaries in distress.
- Enhancing existing recovery powers of insolvency practitioners where arrangements are in place to extract value from a business in distress at the expense of its creditors.
- Giving the Insolvency Service powers to investigate directors of dissolved companies who may have acted in breach of their legal obligations, in particular by phoenixing, for the purpose of avoiding debts.

The proposals will also give directors of potentially viable distressed companies more time to set up a rescue by giving them a grace period when creditors cannot take action against the company. The company would then have time to restructure or seek new investment while continuing to trade, so that small suppliers and workers still get paid.

Transparency in the boardroom

The government also intends to legislate to:

- Make group structures more transparent and require groups to provide explanations of their corporate and subsidiary structures.
- Strengthen shareholder stewardship, especially by institutional shareholders.
- Prevent companies paying dividends when in financial distress and ensure shareholders have an annual vote on dividends.
- Strengthen directors' training and guidance.

These are challenging times for business. Good financial planning and monitoring are essential if your business is to avoid distress and to be able to prosper and grow.

Avoiding tax pitfalls for new and working parents

It can be hard for new parents to keep track of the financial implications of having a baby. There are some issues, however, that it can pay to remember.

Get the most from your tax credits

New parents may be missing out on an average of £495 a year in tax credits because they are reporting their income incorrectly, HMRC has warned.

If you receive statutory maternity, paternity, shared parental or adoption pay you can deduct up to £100 a week when reporting earnings for tax credits. If your payments come to less than £100 a week, you should deduct for the amount you have received.

It is too late to claim for 2017/18, but new claimants should be aware of this for the next tax year.

Always claim child benefit

Child benefit is worth nearly £1,800 a year for a family with two children. However, the 'high income' tax charge claws the full amount back if just one of the parents earns at least £60,000 a year.

If this clawback applies to you, you can opt out of receiving child benefit to avoid having to register for self-assessment and filling in a tax return. However, you should still register for child benefit even when the full amount is clawed back, otherwise you will lose some valuable benefits.

Filling in the child benefit claim form entitles you to national insurance credits, which provide state pension contributions for a stay-at-home parent until a child is 12. This gives a potential 12 years towards the 35 years of contributions required to qualify for a full state pension.

These valuable benefits aren't always easy to find or understand. Please get in touch to make sure you are making the most of every opportunity.

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