client briefing

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For richer, for poorer

Your marital status – whether or not you are married or in a civil partnership – can make a considerable difference to your tax position. In its election manifesto, the Conservative Party proposed recognising 'marriage in the tax system' by allowing up to £750 of unused personal allowance to be transferred between spouses and civil partners if the recipient is a basic rate taxpayer. The idea – worth a token £150 a year – could still see the light of day as the Liberal Democrats have agreed not to oppose it.

Marriage is already a factor in tax planning and can be either an advantage or a drawback. Married couples can transfer assets to each other with no capital gains tax (CGT) implications, as long as they are living together during the tax year in which the transfer takes place. Using this exemption, valuable assets could be transferred into their joint names before an ultimate sale, so that they can each use the CGT annual exemption (£10,100 for 2010/11) against their own portion of the gain.

One disadvantage of marriage is that there can be less CGT exemption for homes that a couple own together or separately. An unmarried couple can have two exempt residences, but a married couple can only have one CGT exempt home at any one time. You have two years from the date of your marriage to choose which one of your residences will be your CGT exempt home, but this residence must be occupied for at least some of the time.

Spouses or civil partners can save a considerable amount of inheritance tax (IHT). Couples can normally leave their entire estates to each other entirely free of IHT. Then, when the surviving spouse dies, the estate will benefit from not just one nil rate band of £325,000 but two, because the other spouses' tax-free amount should also be available. Therefore a wealthy person marrying someone with no assets can benefit from an additional tax-free amount of £325,000, which at 40% is a tax saving of £130,000.

However, there is a restriction where the spouse who receives a transfer is not domiciled in the UK. In this case the maximum IHT exemption for lifetime and death gifts from the UK-domiciled spouse is only £55,000. A non-UK domiciled individual may become domiciled in the UK for IHT purposes once they have been resident in the UK for 17 tax years, at which point the £55,000 limit is removed, though it continues to apply for earlier gifts.

Retiring abroad – the tax consequences

If you are thinking of retiring abroad to enjoy a better climate and to escape the UK tax system, you might find it harder than you expected, especially after a recent tax case decided in the Court of Appeal concerning Mr Robert Gaines-Cooper, who had left the UK to live in the Seychelles.

Mr Gaines-Cooper had made a considerable business fortune, and wanted to enjoy it by being treated as non-UK resident, and therefore free from tax on all of his income and gains arising outside UK.

There are two main ways of becoming non-resident. If you leave the UK and work under a full-time contract of employment that will last for at least one complete tax year, you are non-UK resident from the day after departure, provided your return visits are limited to fewer than 91 days per tax year.

But if you retire abroad or you are leaving for some other purpose, there must be a demonstrable change in your normal pattern of living which clearly shows that there is a break from UK residence.

In future, would-be non-UK residents should ensure that they can demonstrate that they have cut all meaningful ties with the UK. This means severing all business, social and family ties with the UK – for example, resigning from employment, closing bank accounts, taking family, cancelling club memberships etc.

It is also important to sell any accommodation, or at the very least let it out long-term (even then, HM Revenue & Customs, (HMRC) will want a good explanation as to why the property is being retained). This was the main problem for Mr Gaines-Cooper, because his Oxfordshire mansion was regarded by HMRC as his 'main home'.

It is also a good idea to create meaningful ties with the new country of residence. This might mean buying property, registering to vote or having children educated there.

If you are going to live abroad, but not under a full-time contract of employment, you will need to take care to sever your ties with the UK.

Even if you manage to achieve non-resident status, remember that when you are counting days in the UK, any day in which you are here at midnight is considered to be a day spent in the UK. But you can ignore days spent in the UK due to exceptional circumstances, like the recent closure of European airspace.

Update on payroll changes

Employers must submit the end of year PAYE returns for the tax year to 5 April 2010 (and for subsequent years) by electronic means, unless you operate the simplified PAYE deduction scheme for staff who work for you personally; are a member of a religious society whose beliefs are incompatible with electronic communications; or employ one or more care workers to assist yourself or a relative who is elderly or disabled.

You need to write to your HM Revenue & Customs (HMRC) office to claim the exemption, but if an agent submits the PAYE forms on your behalf, the exemption will not be granted. You can now be subject to a penalty if you are late with any payroll deductions due to be paid to HMRC after 18 May 2010. All employers and CIS contractors can be subject to these new penalties.

No penalty is due for the first late payment. The penalty for the second and subsequent late payments in the same tax year increases from 1% to 4% of the total amount paid late. Further 5% penalties may be applied where a payment is more than six months late and over 12 months late. There is also no penalty where an employer has a reasonable excuse for being late.

Mixed bag from the Budget

Many measures in the Chancellor's Budget on 24 March survived the dissolution of Parliament and have become law. Smaller businesses and their owners are both winners and losers from the changes in the Finance Act, which became law on 8 April.

Some of the more business-friendly measures included the annual investment allowance for capital expenditure on plant and machinery being doubled to £100,000, and likewise entrepreneurs' relief for individuals selling their business or certain business assets. This means that up to £2 million of capital gains during a person's lifetime can currently be taxed at the lower rate of 10% rather than the normal rate of 18% (now likely to increase). The 'Time to Pay' scheme for businesses in financial difficulties has been extended over the life of the next Parliament.

On the other hand, the new 50% income tax rate took effect on 6 April 2010 for individuals with taxable income above £150,000 and national insurance rises for employers, employees and the self-employed from 6 April 2011 are unlikely to go ahead as planned. The Conservatives are reported to have agreed with the Liberal Democrats on a partial reversal of the measure for employers. The restriction in tax relief for pension contributions made by people with incomes of at least £130,000 (£150,000 including contributions) is still due to go ahead on 6 April 2011.

Elsewhere in the Budget, from 6 April 2011, there will be a 5% rate of stamp duty land tax on properties costing £1 million and more. All personal allowances were frozen at their 2009/10 levels, including the basic £6,475 allowance that is available to most taxpayers aged under 65. In 2010/11, the basic personal allowance of £6,475 will be progressively withdrawn down to nil for people with a total income above £100,000. As a result of this the effective marginal tax rate for a person on income between £100,000 and £112,950 is 60%.

Except for the new top rates of 50% income tax and 42.5% on dividends, there is no change in income tax rates or to the rate bands. The nil rate threshold for inheritance tax will be frozen at £325,000 until 2014/15. Where taxpayers do not disclose their taxable income or gains and there is an offshore aspect to this tax evasion, such as an offshore bank account, HM Revenue & Customs will be able to charge penalties of up to 200% of the tax lost.

The tax changes introduced in the March Budget and the pre-election Finance Act seem likely to survive under the new Government. The next Budget, due by late June, may also contain some unwelcome new tax changes. After all, the Treasury has forecast a £163 billion deficit for the current year.

Did you know that childcare vouchers worth up to £55 a week are currently free of tax and national insurance for all employees? The previous government announced plans to restrict tax relief for higher paid employees who join a childcare voucher scheme from 6 April 2011. Such employees will only be entitled to receive up to £28 (for 40% taxpayers), or £22 (for 50% taxpayers), of tax and national insurance-free childcare vouchers per week.

Basic rate taxpayers will be entitled to up to £55 of tax-free childcare vouchers per week. This means that the rate of tax relief will be the same regardless of a person's marginal tax rate. Employees who join a childcare voucher scheme before 6 April 2011 will not be affected by this change, as long as they remain within the same voucher scheme. It seems unlikely the new government will stop the change.

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With the dissolution of Parliament, some of the Chancellor's original Spring Budget measures had to be dropped, although the great majority are now law.

The following were left out:

- The 50p landline telephone duty.
- The requirement for employers judged to be a serious risk of non-payment of PAYE or NICs to lodge security with HM Revenue & Customs (HMRC).
- The withdrawal of business treatment for furnished holiday lettings.
- The greater part of the cider duty increase.

It remains to be seen how many of these will re-emerge.

New flexibility for dispensations

Some of the work required in completing the annual returns of expenses and benefits for each employee (forms P11D) can be eliminated if you have a dispensation from HM Revenue & Customs (HMRC) to omit tax deductible expense payments. Also, where a dispensation is in place, the employees' PAYE codes will not include expenses for which they can claim a tax deduction, so the accuracy of PAYE codes will be improved.

HMRC will readily grant dispensations for one-person companies, even where no independent person is available to check the expense claims, as long as all the expenses incurred are supported by receipts, the claims do not include disallowable items, and all the amounts claimed are reasonable. In addition, all receipts and supporting information must also be retained for at least six years.

If the expense claims include items that are not supported by receipts, such as where HMRC authorised mileage rates are used to calculate mileage paid for use of a private car, HMRC insist that an independent person checks and authorises each claim. We could do this checking for you. You can apply for a dispensation online through the HMRC website, or by using the paper form P11DX.

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