Paul S. Axcell F.C.A

CHARTERED ACCOUNTANT

10 Springfield Ovington Prudhoe NE42 6EH

Tel: 01661 831490 **Mobile:** 07713 626709

E-mail: paul@axcell.co.uk

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NEWS FOCUS

Reform of Class 2 NI contributions

Most individuals who are self-employed are required to pay Class 2 NIC. This is a contributory benefit which protects their entitlement to the State Pension. Those who are not liable to pay can pay voluntarily to protect their benefit entitlement.

Changes have been made for the 2015/16 tax year. The amount of the liability will be determined when that person completes their self assessment return. This means that it will be paid alongside their income tax and Class 4 NIC.

Existing direct debit arrangements will cease by July 2015. For those who wish to spread the cost HMRC will retain a facility to enable them to make regular payments throughout the year. For those who do not use this facility the payment date for the 2015/16 liability will be due on 31 January 2017.

Those with small profits will no longer have to apply in advance for an exception certificate. Voluntary payments will continue to be allowed.

And just when we were just getting used to this change the Coalition government, in Budget 2015, proposed the abolition of Class 2 NIC. Class 4 NIC will be reformed to include a contributory benefit test.

SUMMER 2015

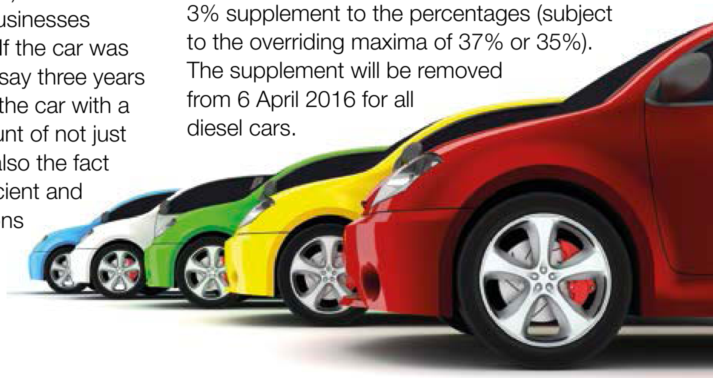
Have you noticed a large increase in the car benefit in your notice of coding?

If you are an employee or a director you typically will have received a notice of coding for the 2015/16 tax year about three months ago. If you haven't done so already, it is well worthwhile comparing this to the notice of coding for 2014/15. Because if you have a company car and you haven't recently changed your car, you will probably see a larger than normal increase in the estimated company car benefit.

Most cars are taxed by reference to bands of CO_2 emissions. The percentage applied to each band has typically gone up by 1% each year with an overriding maximum charge of 35% of the list price of the car. From 6 April 2015 the percentage applied by each band goes up by 2% and the maximum charge is increased to 37%. So a petrol car with an original list price of £30,000 and CO_2 emissions of 135 will see an increase in the taxable benefit from £6,000 (20%) to £6,600 (22%). These increases may discourage businesses from retaining the same car. If the car was purchased by the employer, say three years earlier, a decision to replace the car with a new car needs to take account of not just the cost of the new car but also the fact that many cars are more efficient and thus have lower CO_2 emissions than a model manufactured three years earlier.

What does the future hold? It won't get any better. From 6 April 2016 there will be a further 2% increase in the percentage applied by each band with similar increases in 2017/18 and 2018/19. For 2019/20 the rate will increase by a further 3%. So if the same car is still owned in 2019/20, the car benefit is £9,300 (31%) even though the car will be nine years old.

There is a slight bit of good news on the horizon. If the car is diesel we have had a 3% supplement to the percentages (subject to the overriding maxima of 37% or 35%). The supplement will be removed from 6 April 2016 for all diesel cars.



Planning for capital expenditure in the next few months

For many businesses the prospect of obtaining a 100% tax deduction for the cost of plant and machinery purchased by the business is attractive. The Annual Investment Allowance (AIA) provides such deduction to many businesses for the cost of most plant and machinery (not cars) purchased by a business up to an annual limit. Where businesses spend more than the annual limit, any additional qualifying expenditure generally attracts an annual writing down allowance of only 18% or 8% depending on the type of asset.

The maximum annual amount of the AIA was increased to £500,000 from 1 April 2014 for companies or 6 April 2014 for unincorporated businesses until 31 December 2015. However it was due to return to £25,000 after this date. George Osborne announced in Budget 2015 that following conversations with business groups this would be addressed in the Autumn Statement and would be set at a much more generous rate.

So, does that mean there is little time pressure on bringing forward capital expenditure plans? Not necessarily. There are two reasons why you may wish to press ahead with your plans. The first reason is the straightforward point that tax relief is available for the expenditure on an accounting period basis. For example if you have a 30 September year end, expenditure incurred between 1 October 2014 and 30 September 2015 reduces the same tax liability.

The second reason is the effect of moving from a higher to a lower annual amount of AIA. The amount of the AIA from 1 January 2016 is not known but is likely to be considerably less than £500,000.

On the previous occasions where there has been a change in AIA, there have been transitional provisions to calculate the amount AIA in an accounting period which straddles the date of change. If the transitional provisions for the 1 January 2016 are similar to the previous changes, there will be two important elements to the calculations:

1. A calculation which sets the maximum AIA available to a business in an accounting period which straddles 1 January 2016.

2. A further calculation which limits the maximum AIA relief that will be available for expenditure incurred from 1 January 2016 to the end of that accounting period.

It is the second figure that can catch a business out.

Example

Let us assume the new AIA is £200,000.

A company has a 31 March year end.

The maximum AIA in the accounting period to 31 March 2016 will be:

9 months to 31 Dec 2015 (three quarters of £500,000)	£375,000
3 months from 1 Jan 2016 (one quarter of £200,000)	£50,000
Total annual AIA using first calculation	£425,000

This is still a generous figure. However if expenditure is incurred on or after 1 January to 31 March 2016 the maximum amount of relief for that expenditure will only be £50,000. This is because of the restrictive nature of the second calculation.

Alternatively, the business could defer its expenditure until after 31 March 2016. In the accounting period to 31 March 2017, AIA will be £200,000. However tax relief will have been deferred for a full year. In tax terms the moral of the tale is for the business to ensure that significant expenditure is incurred before 1 January 2016.

Changes to charity audit exemption thresholds

In July 2012, Lord Hodgson issued a report on the Charities Act 2006 which included a number of recommendations for charities in England and Wales. One of these was to increase the audit exemption threshold. Further to this report, two statutory instruments have been laid before Parliament and are effective in England and Wales for financial years ending on or after 31 March 2015.

For financial years ending on or after 31 March 2015:

- the audit exemption ‘income test’ threshold is increased from £500,000 to £1,000,000
- there are no changes made to the ‘asset test’, i.e. the asset limit of £3,260,000 and the income limit of £250,000.

Another change included within the statutory instruments is an increase in the income limits for group audit exemption and for the preparation of consolidated accounts from £500,000 to £1,000,000

Note that if the charity is a company it must also qualify as a small company under company law to claim audit exemption.

Charities which are now audit exempt will fall under the independent examination regime. This is a simpler process but there is less depth to the work performed. Many charities not required to have an audit still choose to do so as a means of providing additional assurance to the various people and institutions involved with the charity.

These changes are to charity law in England and Wales. If a charity is deemed to be cross border and is registered not only in England and Wales but also in another jurisdiction such as Scotland, then the charity will need to consider Scottish charity law as well.
The audit exemption limits for charities in Scotland are not expected to change in the near future and broadly speaking use the same limits as English and Welsh charities for financial years ending before 31 March 2015.

These changes do not affect Northern Ireland.

If you want any advice on the effect to you of the changes and the relative merits of an audit or independent examination, please do get in touch.

Has inheritance tax planning been turned on its head?

From time to time there is a change to the income or corporation tax system which can significantly impact on capital tax planning. Some would argue that the new tax treatment of pension funds is one such change.

Where an individual has not bought an annuity, a defined contribution pension fund remains available to pass on to selected beneficiaries. Inheritance tax (IHT) can be avoided by making an 'expression of wishes' to the pension provider suggesting to whom the funds should be paid. However, under the old system there were other tax charges. These charges reflected the principle that income tax relief was given on contributions into the pension fund and therefore some tax should be payable when the fund was paid out. In some situations tax at 55% of the fund value was levied.

A new era

There are now significant exceptions from the tax charges for benefits first paid on or after 6 April 2015.

- Anyone who dies under the age of 75 will be able to give their defined contribution pension fund to anyone completely tax free. This is subject to the condition that the fund is transferred into the names of chosen beneficiaries within two years. A beneficiary can take the fund out as a lump sum, buy an annuity or take income when required through drawdown.
- Those aged 75 or over when they die will also be able to pass their defined contribution pension fund to any beneficiary who will then be able to draw down on it as income whenever they wish. They will pay tax at their marginal rate of income tax when the income is received. The same tax position applies where a beneficiary receives an annuity payment. Beneficiaries will also have the option of receiving the fund as a lump sum payment, subject to a tax charge of 45%. It is proposed that from 6 April 2016 the lump sum will be charged to tax at the recipient's marginal rate of income tax.

The fund does not have to be left to just one beneficiary – it can be split among many beneficiaries and the beneficiaries are not restricted to the person's family.

The new tax treatment does not apply to the extent that the pension fund exceeds the Lifetime Allowance (currently £1.25 million but set to fall to £1 million from 6 April 2016).

Example

Eric is 65 and is thinking of retiring. He has built up a good pension fund and has other investment assets. He has passed control of his company to his son who is now running the company but he envisages he will continue to receive a reasonable dividend from the company.

His wife is to inherit his non-pension assets. He completes an expression of wishes form leaving 50% of his pension fund to his daughter, Jane, who is not involved in the company and the remaining 50% to be split between his grandchildren.

Eric dies, aged 80. He has accessed some of his pension fund but most of the fund remains intact. As he was over 75, the beneficiaries of his fund are taxable at their marginal rates of tax but only if, and when, income is taken. So if a grandchild is still in full time education when Eric dies and has no other income, withdrawals up to the personal allowance could be taken with no tax and further amounts at relatively low tax rates. If another grandchild is already earning a good salary and is a higher rate taxpayer, their fund could be left to grow and accessed in their retirement.

These changes may for some turn traditional IHT planning on its head. With a 55% tax charge on inherited pension funds and 40% on assets not in a pension fund, the message was 'don't leave money in your fund – take it out while you can'. Now the message is: 'if you have other assets, live off those and save the pension fund for another day'. You may need access to the fund in later life, but if you don't, there is comfort in knowing that your chosen beneficiaries will have the chance of accessing the accumulated wealth in a tax efficient way.

What is an employee?

The risks to any business paying for the services of an individual are significant. Paying a person as if they are self employed can result in large arrears of PAYE and NIC being payable by the employer.

An indication of the complexity of the issue is to be found in a report by the Office of Tax Simplification (OTS) which runs to 190 pages. It rapidly became clear to the OTS that the tax system is still in many ways stuck in an out-of-date mindset. In the 1950s and 1960s many workers were firmly on the payroll as employees. The traditional independent contractor was self-employed. The huge growth in freelancing as a way of life (and work) doesn't fit readily into this traditional model.

Has the OTS come up with a solution? No it hasn't but it does suggest some useful improvements which could be made in the short term to provide more certainty for businesses. It also suggests longer term ideas. We shall see if the government picks up the baton so that some progress can be made.

Prompt payment discounts and VAT

If you offer a discount to your customers for prompt payment, the VAT treatment in your VAT accounts has become quite tricky.

For many years UK legislation has allowed suppliers to account for VAT on the discounted price offered for prompt payment even when that discount was not taken up. An example would be a 5% discount of the full price if payment was made within 14 days of invoice date. If the supply was for £1,000 (20% standard VAT rate), VAT on the invoice could be charged at £190 (£1,000 less 5% discount x 20%) rather than £200 (£1,000 x 20%). Whether the customer took up the discount or not the VAT payable would stay at £190 in both cases.

The VAT treatment has now been brought into line with the Principal VAT Directive, which requires VAT to be accounted for on the consideration actually received. The change applies generally to businesses that offer a prompt payment discount (PPD) on invoices raised or received from the 1 April 2015. The change does not apply to imports.

Correct accounting

On issuing a VAT invoice a business will have to record the VAT on the full price in their accounts. If offering a PPD suppliers must show the rate of the discount offered on their invoice. If the PPD is taken up then the supplier will have to make an adjustment in their accounts to reflect the reduced consideration. In addition the supplier will have to decide which of two processes it will undertake to inform the customer that the PPD has been validly claimed and the reduced VAT payment accepted. This can be done either through formally issuing a credit note or an approved statement on the original invoice. An example of this would be:

'A discount of X% of the full price applies if payment is made within Y days of the invoice date. No credit note will be issued. Following payment you must ensure you have only recovered the VAT actually paid.'

If you have any questions on the correct procedures or information requirements in the light of this change please do not hesitate to contact us.

Take care with the calculation of holiday pay

In recent years, there have been a number of cases before the Employment Appeal Tribunal (EAT) and the Court of Justice of the European Union (ECJ) which show that it can be difficult to calculate the amount of holiday pay due to an employee.

Under the Working Time Regulations 1998 (as amended) most workers are entitled to paid statutory annual leave. This is 5.6 weeks (28 days) if the employee works five days a week. These regulations are derived from the EU Working Time Directive (which requires workers to be given four weeks annual leave).

The fundamental principle decided by the ECJ and the EAT is that workers should be entitled to their 'normal remuneration' when on holiday.

Two important areas in which recent judgements have been made are overtime and commission payments.

In November 2014, three cases were heard together by the EAT. In these cases, employees were required to work overtime if requested by their employers. The EAT referred to this type of overtime as 'non-guaranteed overtime'.

Before these cases it was generally considered that holiday pay need only include 'guaranteed' overtime.

Guaranteed overtime is overtime which the employer guarantees to provide to the employee even if the employer has no work available at the time.

Following the principles set out by the ECJ, the EAT has decided that non-guaranteed overtime which is regularly paid must be taken into account in the calculation of holiday pay.

There is currently no definitive case law that suggests that voluntary overtime needs to be taken into account.

In February this year, a further ruling on commission and holiday pay was made by an Employment Tribunal in the case of Lock v British Gas although the principle had already been decided by the ECJ. Mr Lock was a salesman whose remuneration consisted of basic salary and commission calculated by reference to sales achieved (typically 60% of his remuneration). The ECJ held there was an 'intrinsic link' between the commission payments and the tasks he was required to carry out under his contract of employment. Therefore commission was part of 'normal remuneration'.

What should employers do?

It would be prudent to:

- review the variable elements in employees' pay and whether these are regularly paid. Overtime and commissions are two examples – there may be other amounts. The fundamental test is whether these sums are intrinsically linked to the tasks required to be performed by the employee
- consider including these elements in holiday pay going forward. The additional payments do not have to be for the annual leave given in excess of the EU four weeks requirement
- review employment contracts to see if they require amendment.

Acas has lots of advice on its website and for specific guidance, employers can contact a helpline provided by Acas:

http://www.acas.org.uk/helpline