Calibrate Law

BRIEFING NOTE: STEPS TO PROTECT YOUR PERSONAL TAX POSITION UNDER COVID-19

CASH IS KING

This is true at the best of times and right now enhancing cash flow is even more important. Whilst the Government has introduced a number of initiatives to help businesses and the self-employed such as Time to Pay, Business rate holidays, the Job Retention Scheme (furlough) and the Coronavirus Business Interruption Loan Scheme, we have identified a number of other HMRC approved reliefs to help businesses and entrepreneurs manage their cash flows over the next few months. In addition, we have also highlighted some other ideas and opportunities that might be relevant at a time when asset values may be subdued.

LOSS RELIEFS OFTEN OVERLOOKED

1. Sole-trader and partnership trading losses can usually be offset against income (or possibly gains) of the same year or an earlier year. Income tax relief is limited to the higher of £50,000 and 25% of the adjusted total income of the relevant year.
2. Trading losses in the final 12 months of a trade can be carried back against profits arising in the prior three years.
3. Corporate trading losses can be carried back against prior year profits (or carried forward subject to restrictions).
4. Certain capital losses can be offset against current and / or prior year income (e.g. capital losses on EIS qualifying shares or shares subscribed for in an unquoted or AIM listed trading company).

CONSIDER MAKING A NEGLIGIBLE VALUE CLAIM

"It may be appropriate to make a negligible value claim to crystallise a capital or income loss. Shares become of negligible value where shares or securities have become worth next to nothing while someone has owned them. Capital losses are usually available to investors when shares or securities in a company have become of negligible value.

Income losses are available for EIS qualifying investments or where you have previously subscribed for shares in an unquoted or AIM listed UK trading company.

The relevant loss can be carried back up to two years (if the shares were also of negligible value at that time)."

REDUCE RECENT INHERITANCE TAX CHARGES

If you have paid inheritance tax on:

- property; or
- listed shares, units in an authorised unit trust or shares in an open-ended investment company

and the value of those assets was lower within four years of death for property or 12 months for shares, it may be possible to make a claim for a repayment of some of the inheritance tax paid.

SUBMIT INCOME TAX RETURNS TO ACCESS REFUNDS

HMRC has already introduced an automatic deferral of the 31 July payments on account for those impacted by the coronavirus (without the application of penalties or interest).

For those expecting a refund from their 2020/21 tax return, we recommend submitting it as soon as possible (e.g. for those with EIS investments, private pension contributions, charitable donations or where the taxes deducted at source / the first payment on account are likely to exceed their total tax liability).

SUCCESSION PLANNING WITH LOWER ASSET VALUES

Falling asset values may provide an opportunity to think about succession planning.

If you were considering transferring property or investments to the next generation or into a trust, doing so when the asset values are relatively low should help reduce any upfront inheritance tax or capital gains tax costs.

Similarly, now may be a good time to set up a Family Investment Company (FIC) or introduce "growth" or "hurdle" shares into an existing FIC to accrue future value to the next generation.

MAKE THE MOST OF THE ENTERPRISE INVESTMENT SCHEME (EIS)

Qualifying investments of up to £1m (and up to £2m for knowledge-intensive companies- KITs) can provide income tax relief of up to £300,000 (up to £600,000 for KITs):

- The relief can be used in the year of investment or carried back to the prior year;
- Additional income tax relief can also be obtained should the company you have invested in, fail (consider making a negligible value claim as well).

Capital gains tax deferral relief can be claimed against disposals realised up to 12 months before or 36 months after the date of the EIS subscription.

STATUTORY RESIDENCE TEST REPRIEVE

Finally, it is worth noting that for those individuals concerned about the impact of coronavirus on their UK tax residency status (due to restrictive movements or an inability to leave the country / travel to another country), HMRC has released guidance outlining "exceptional" circumstances where day counts will be ignored. Therefore, for the majority of the statutory residence tests, you should be able to disapply up to 60 days in the tax year when working out your UK day count.

There is also a challenge around corporate residence where directors are locked down and cannot fly to board meetings. Where board meetings are now being held by conference call we suggest companies consider taking advice on what this means for their tax residence position. The risk is that if companies move residence from one country to another as a result of the location of the directors, this can trigger large tax bills for the company in the form of exit charges.

HOW WE CAN HELP

Our dedicated tax team and legal team have extensive experience in assisting individuals, entrepreneurs, family offices and private businesses.

If you would like to benefit from our services and discuss suitable options that work for you, please do get in touch.

Craig Kemsley
Head of Tax

T: +44 (0)20 3988 2030
M: +44 (0)7810 003 064
E: ck@calibrate-law.com

This briefing note is for reference purposes only. It does not constitute tax advice and should not be relied upon as such.
Specialist tax advice about your specific circumstances should always be sought separately before taking or deciding not to take any action.