TAYLOR ASSOCIATES

Chartered Accountants & Registered Auditors
1st Floor, Gallery Court, 28 Arcadia Avenue, London N3 2FG
Tel: +44 (0)20 3301 9001 **Fax:** +44 (0)20 3301 9002
Email: info@taylorassociatesllp.com

Uber and you

The Uber case on worker status, recently decided in the Supreme Court, has important practical lessons for businesses.

The judgment held that Uber taxi-drivers were not self-employed contractors: they were 'workers'. This is a specific status in employment law, giving the right to minimum wage, holiday pay and other legal protection. Uber's extensive control over the drivers was a key determining factor in the verdict.

Significantly, the judgment also emphasised the importance of starting not with the written agreement (if any) between parties when establishing employment status, but with the purpose of the relevant employment legislation. This exists 'to give protection to vulnerable individuals who have little or no say over their pay and working conditions because they are in a subordinate and dependent position'. This means employers, 'frequently in a stronger bargaining position', cannot simply contract out of such protection.

The Uber case relates to the gig economy, but it has wider practical implications. It's a verdict that should inform thinking generally around the use of non-standard working arrangements, both for those who automatically identify themselves as employers and those who don't. The employment cost of having to reclassify members of the workforce can be high, and it may be prudent to check now that anyone in a non-employee role has been appropriately classified and that contracts indicate accurately the reality of the working relationships involved. We should be delighted to advise further.

Covid-19 support schemes latest

Ongoing change to the Coronavirus Job Retention Scheme ('furlough' scheme) and Self-employment Income Support Scheme (SEISS) creates the potential for inadvertent errors.

We outline recent changes here, but for full information on how the schemes work, see **https://bit.ly/3c3v9Mn** and **https://bit.ly/2QoWa7G**.

There are two further SEISS grants, SEISS 4 and 5. They are intended as a final, more restricted phase of support. For SEISS 4, businesses must declare a reasonable belief that there will be a significant reduction in trading profits due to reduced business activity, capacity, or demand because of Covid-19. The impact on the business must relate to the period 1 February 2021 to 30 April 2021, and the reduction in profits must be reflected in the figures reported on the relevant tax return in due course. Evidence must be kept to support claims, see **https://bit.ly/2PSkbnr**. SEISS 5 introduces an additional turnover test; the amount of grant will hinge on how much turnover has fallen between April 2020 and April 2021.

To be eligible for SEISS 4 or 5, the 2019/20 tax return must have been submitted before midnight on 2 March 2021. HMRC will base calculations on 2019/20 tax return data, and more recent years than for earlier SEISS grants. This could produce unexpected results. It opens the door to some new claimants, such as those starting self-employment in the 2019/20 tax year, provided they meet other eligibility conditions. On the other hand, someone eligible for earlier SEISS grants may receive more or less than before.

The furlough scheme runs to 30 September 2021. There is no change until 1 July 2021, when government contributions drop. Employers then make 10% contributions in July, and 20% in August and September. For periods starting on or after 1 May 2021, claims can be made for employees employed on 2 March 2021, if a PAYE RTI submission has been made to HMRC between 20 March 2020 and 2 March 2021, notifying payment of earnings for that employee. It's not necessary to have claimed under the scheme for an employee before 2 March 2021 to claim on/after 1 May 2021.

Covid-19 support schemes are very much in the public eye. HMRC stresses that it is not looking for innocent errors. But with details of employer furlough claims now published, new SEISS recovery powers, and a new Taxpayer Protection Taskforce set up to tackle fraud, it is important that any claim is well-evidenced and can stand HMRC scrutiny. Assessment of the position now would be prudent, and this guidance from the Chartered Institute of Taxation may make a good starting point to assess potential issues **https://bit.ly/31VOKuS**. We should, of course, be glad to help you review compliance.

Inside this issue

- Going on holiday. Counting the days
- Biggest tax cut ever? The new super deduction
- New Covid-19 loan now up and running
- Using a loss
- Property: what's new?
- Budget big freeze

Going on holiday. Counting the days

Furnished holiday lettings (FHLs) have their own tax treatment, reliant on a set of strict day-count rules. With the impact of Covid-19 on occupancy, business owners may need to take stock of the position.

A property must pass all three tests:

- pattern of occupation condition: the total of lets of more than 31 continuous days must not exceed 155 days a year
- availability condition: property must be available for let for at least 210 days in the year (exclude any days you stay there yourself)
- letting condition: property must be let commercially as furnished holiday accommodation to the public for at least 105 days a year. Exclude days let to friends or relatives at zero or reduced rates: and lets more than 31 days (unless the 31 days extend due to unforeseen circumstances, such as a guest becoming ill and unable to leave on time).

For established lets, tests apply to the tax year (for income tax): and to the 12 months of the accounting period (for corporation tax). There are slightly different rules on commencement and cessation.

If your day count to 5 April 2021 falls short of the letting condition, a 'period of grace election' could preserve FHL status. But you must still meet the other two tests. The election can be available if you have a genuine, demonstrable, intention to let, but can't, for example because of cancellations due to unforeseen circumstances. For the year to 5 April 2021, this can include Covid-19 measures like enforced closure due to lockdown or travel ban. If you have more than one FHL, you may be able to use an averaging election to similar effect. We should be delighted to advise further if you have concerns here.

Biggest tax cut ever? The new super deduction

'Bold and unprecedented'. That was the Chancellor's description of the new 130% super deduction for expenditure on new qualifying plant and machinery announced in the Budget. The headlines were that for every pound invested, tax is cut by up to 25p.

But what are the terms and conditions, how does it sit alongside the usual rules on capital allowances – and is it the give-away it's been made out to be?

First of all, it's not available to every business. It's targeted at companies, not unincorporated businesses. These will have to continue to look to the Annual Investment Allowance (AIA), with its temporarily extended higher £1 million limit for major capital spending up to 31 December 2021.

It's temporary, lasting for two years. And it works by giving first year tax relief in the form of capital allowances for expenditure between 1 April 2021 and 31 March 2023. For assets that would normally qualify for 18% main rate writing down allowances, the super deduction gives first year relief of 130%. Assets normally qualifying for 6% special rate writing down allowances (such as integral features in buildings, like electrical and lighting systems) can qualify for a first year allowance of 50%. But this 50% allowance is likely to be relevant only to companies that have used their AIA. Unlike the AIA, there is no cap on eligible expenditure. The rate of the deduction will be apportioned for a business making eligible expenditure in an accounting period straddling 1 April 2023.

There are exclusions. Plant or machinery must be new, not used or second-hand. Expenditure incurred on contracts entered into before the Budget on 3 March 2021, does not qualify. The general exclusions in existing legislation relating to first year allowances apply. Expenditure on cars, for example, and assets for leasing are excluded. This latter point means commercial landlords may benefit less than the initial publicity for the proposals might have led them to expect. Rules on what happens when the assets are disposed of make the picture more complex. With disposal proceeds treated as a taxable balancing charge, these potentially clawback some of the previous benefits. It will be important to keep records of assets on which the super deduction is claimed so they can be correctly treated on sale.

Will it benefit your business? Not in every case. As it sits alongside other tax measures, it's a finely balanced equation. It is designed to incentivise investment now, with the corporation tax rate at 19%. But with the planned increase in corporation tax from 1 April 2023, when the super deduction ends, the outlook for your business may change. The main rate of corporation tax is set to increase to 25% on profits over £250,000. Only companies with profits up to £50,000 will retain the 19% rate, with profits between £50,000 and £250,000 taxed on a sliding scale. Whether the super deduction significantly benefits your company will depend on the forecast level of capital expenditure, the type of asset, financing method, and your expected corporation tax rate.

With the AIA due to revert to £200,000 from 1 January 2022, and higher corporation tax rates in prospect, careful timing of major capital expenditure is more critical than ever. The new provisions on loss carry-back could also affect decision making. All in all, it's a complex area, and the right decision for your business will be unique to your business. We should be delighted to advise further.

New Covid-19 loan now up and running

Budget 2021 announced a successor loan scheme to support UK business recovery. Earlier Covid-19 loans, like the Bounce Back loan, closed to applications on 31 March 2021.

The new Recovery Loan Scheme (RLS) launched on 6 April 2021 and runs to 31 December 2021, subject to review. It provides finance that can be used for any legitimate business purpose, including managing cash flow, investment and growth. It is designed to appeal to businesses which can afford to take on additional debt finance for these purposes. Interest rates are capped at 14.99% and are expected to be much lower in most cases.

The scheme offers term loans, overdrafts, asset and invoice finance. The maximum facility is £10 million per business. The minimum facility varies, starting at £1,000 for asset and invoice finance and £25,001 for term loans and overdrafts. Term loans and asset finance facilities are available for up to six years; overdrafts and invoice for up to three.

Eligibility

- no turnover restriction applies
- open to businesses trading in the UK
- that can show their business is viable or would be, if it wasn't for the pandemic
- that are impacted by Covid-19
- and are not in collective insolvency proceedings
- can be used on top of previous Covid-19 loan schemes, though previous borrowing may restrict amount available under the RLS
- not open to public sector bodies; state-funded primary and secondary schools; or banks, building societies, insurers and reinsurers (but not insurance brokers).

The government guarantees the lender 80% of the finance. No personal guarantees will be taken on facilities up to £250,000, and the borrower's principal private residence cannot be taken as security when borrowing more than this. Interest and fees will have to be paid from the outset.

Credit checks and fraud checks will be carried out on all applicants. The checks and approach may vary between lenders. When making their assessment, lenders may overlook concerns over short to medium term business performance caused by the pandemic.

Loans are available through a network of accredited lenders and full details are here **https://bit.ly/2Ql23CC**.

Using a loss

Welcome news for previously profitable businesses struggling with Covid-19 losses.

The Budget announced a temporary extension to the period over which a business can carry back trading losses. This means relief can be carried back to the three previous years, rather than the usual one year, potentially triggering a tax refund. Unlike the new super deduction, it's available to unincorporated businesses, as well as companies.

Unincorporated businesses

The extension applies to trading losses made in the 2020/21 and/or 2021/22 tax years for unincorporated businesses, allowing relief against profits of the same trade. A cap of £2 million applies to each extended carry back loss year. There is no partnership-level limit.

Companies

For companies, the current rules allow trading losses to be carried back one year against total profits. For accounting periods ending between 1 April 2020 and 31 March 2022, trading losses will be available for carry back for an additional two years against profits of the same trade. Losses are required to be set against profits of most recent years first, before carry back to earlier years. There is no change to the existing one-year unlimited carry back, but after that, there is a cap of £2 million on the losses that can be carried back to the earlier two years. The cap applies to each loss-making year. There is a group cap of £2 million, though individual group companies have a £200,000 de minimis limit. Although most extended loss carry back claims will need to be made in the company tax return, usefully, claims of £200,000 or less may be submitted earlier, outside the tax return.

Snakes and ladders

But as ever with tax, there are other issues to consider. There is more than one way to use a loss, and whilst the Budget incentive is to use carry back against trading income, a different approach may be better for your business. For companies, loss relief generally has been more flexible since 2017, providing a wider range of options, and we should be delighted to discuss this with you further. For unincorporated businesses, a prime question will be using the loss in the most tax efficient way, at the same time as looking to retain the benefit of the personal allowance. In terms of timescale, HMRC will not action claims or make repayments until the Finance Bill receives Royal Assent, which is unlikely to be until early summer.

We have only been able to flag up some key points here. We should be happy to discuss in detail the best way forward for your business.

Property: what's new?

Like the extension to the Stamp Duty Land Tax holiday to 30 June 2021 in England and Northern Ireland; the similar announcement in Wales, and absence of one in Scotland, some changes make headlines. But others escape the media spotlight.

Capital gains tax (CGT) 30-day reporting is one of these. The new regime comes into play for any disposals of UK residential property since 6 April 2020, where there is CGT to pay. In such cases, tax must be calculated, reported and paid within 30 days of completion, rather than taking place within the self assessment tax return cycle as before. Relevant disposals in the year to 5 April 2021 should therefore already have been reported.

Reporting is done online, through HMRC's UK Property Reporting Service. We would be happy to report recent disposals for you, as your agents. Unfortunately, HMRC's system is not entirely hands-free, and requires you to set up a UK Property Account on gov.uk to authorise us to report for you. This account, it should be noted, is a completely different entity from the Personal Tax Account.

30-day reporting impacts you only if you have CGT to pay. Disposal of a main residence, for most people, will be covered by the CGT relief known as private residence relief (PRR). PRR applies if the property has been occupied as your main residence throughout the entire period of ownership. Scenarios where a CGT liability could arise, and hence a need for a 30-day return, include disposal of a buy-to-let property; a holiday home; property you have inherited; property you've never lived in; or have lived in for just some of the time you've owned it.

Recent changes have restricted availability of PRR, potentially bringing more property transactions within scope of 30-day reporting. Letting relief, for example, used to give relief up to £40,000 (up to £80,000 for property in joint names) on the sale of property that had, at some point, been used as the main residence, but had also been let as residential accommodation. For disposals from 6 April 2020, the relief is considerably restricted, available only where you live in the property at the same time that it is let out. Rules relating to property transfer between spouses have also changed. The recipient spouse now also receives the period of ownership and history of their property use, and this can have knock-on consequences for PRR. So, too, can change on rules giving automatic relief for the final months of ownership.

Please do talk to us in advance if you are planning property transactions, particularly if you have doubts as to whether full PRR will apply.

Budget big freeze

Personal taxes, capital taxes, pensions. No dramatic announcements.

But Chancellors can create considerable change through low-key tactics, and the Budget freeze for various rates and allowances until 5 April 2026 will impact many people.

Personal tax

Initially, the UK-wide personal allowance increases, rising to £12,570 from 6 April 2021. The basic rate band also increases, to £37,700. This means the higher rate threshold – the point at which you start paying higher, rather than basic rate tax in England, Wales and Northern Ireland, increases to £50,270 (if you have a full personal allowance).

But after this date, the personal allowance and higher rate threshold won't change until 5 April 2026. As incomes go up, this brings more people within the tax net, and pushes some basic and higher rate taxpayers into the higher and additional rate bands. 1.3 million people, in fact, according to government figures, should come into income tax by 2025/26 and one million into higher rates of tax. From the 2026/27 tax year, starting 6 April 2026, the personal allowance and basic rate limit are indexed with the Consumer Price Index by default.

Scottish taxpayers: for Scottish taxpayers, income tax rates and bands for non-savings and non-dividend income are different from the rest of the UK: see **https://bit.ly/3sk6fji**. The freeze to the personal allowance impacts Scotland, although the freeze to the UK higher rate threshold only affects those with savings and dividend income.

Big change postponed?

There's been much discussion of a major tax overhaul, with inheritance tax (IHT), capital gains tax and pensions contenders for a makeover. It didn't happen on Budget day, nor the UK's first 'Tax Day', publication day for a raft of tax consultations. What Tax Day did produce was a commitment to reduce red tape for IHT, so that from 1 January 2022, over 90% of non-taxpaying estates shouldn't complete IHT forms for deaths when probate or confirmation is required.

But sooner or later, change is likely, as the government looks beyond the Covid-19 crisis. Perhaps it has been reined back until 2026, when the big freeze ends. We shall have to wait and see. In the meanwhile, please don't hesitate to contact us for advice in any of these areas.

Disclaimer - for information of users: This newsletter is published for the information of clients. It provides only an overview of the regulations in force at the date of publication and no action should be taken without consulting the detailed legislation or seeking professional advice. Therefore no responsibility for loss occasioned by any person acting or refraining from action as a result of the material contained in this newsletter can be accepted by the authors or the firm.