TAX COMPASS

Guiding Your Business Through The 2023 Tax Landscape

In an ever-evolving tax landscape, it is crucial for businesses to stay informed and prepared. To help you navigate the complexities of the current tax environment, we have compiled this publication to set out the top ten tax matters that should be on your radar for 2023.

1 Employment Tax Matters - Share Schemes and Reporting
Ensure your business is up to date on the latest developments in share scheme regulations and reporting requirements, including the filing of 2022/23 annual returns by the deadline of 6 July 2023.

2 Corporation Tax
With corporation tax having increased to 25% and the associated company rules having changed, companies need to consider carefully how and when to utilise any carried-forward losses and closely monitor quarterly instalment limits to ensure they are not inadvertently caught out.

3 Corporate Criminal Offence (CCO)
CCO applies to businesses of all sizes. Ensure your business has appropriate procedures in place to prevent the facilitation of tax evasion, as failure to do so may lead to criminal liability and significant penalties under the CCO legislation.

4 Group Structuring
Assess your group structure for eligibility under the Substantial Shareholding Exemption. Evaluate the appropriateness of a demerger or explore opportunities for increased efficiency through a group rationalisation.

5 Exit Strategies
Is now the time to plan for an exit from your business whilst CGT rates are relatively low? With a general election on the horizon, delaying could risk being impacted by a potential CGT rate rise.

6 International Matters
Consider whether your company has any overseas tax exposure risks taking into account overseas workers, and whether current transfer pricing policies and documentation are appropriate and sufficiently robust to avert a HMRC enquiry and mitigate the risk of tax adjustments and penalties.

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7 Close Companies

Close companies must strategically plan for late-paid interest rules and loan to participator regulations, including 'bed and breakfasting' anti-avoidance measures, to prevent unintended cash flow disadvantages. Be aware that Close Investment Holding Companies will be liable to corporate tax at 25% regardless of their level of profits.

8 R&D Tax Credits

As the R&D tax incentives landscape evolves, it is important for UK companies to stay informed and adapt, safeguarding access to valuable tax incentives. Being aware of changes to the enhanced deduction percentage, qualifying cost categories, and understanding the importance of advance notification for first-time claimants are essential to maximise benefits.

9 Capital Allowances

As the super-deduction expires and the temporary 'full expensing' for qualifying capital expenditure emerges, businesses should stay updated on prevailing capital allowance rates and schemes. By doing so, you can optimise tax relief on capital expenditure, maximising financial benefits for your business.

10 VAT

Keep abreast of the ongoing tax ramifications post-Brexit, encompassing alterations to VAT, customs duties, and cross-border transactions. Staying informed will help your business maintain compliance and remain competitive in the evolving marketplace.

All of these matters are explored in more detail in the following pages. For further information please contact your usual Rawlinson & Hunter contact or one of our Business Tax specialists below:

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Navigate Compliance; Navigate Opportunities; Navigate Growth

1 Employment Tax Matters - Share Schemes and Reporting

Annual Reporting

Companies must report to HMRC certain transactions falling within the scope of the Employment-Related Securities' (ERS) regime.

The term 'securities' holds a broad definition, encompassing not just shares, but also stocks, debentures, options and futures, rights or alternative finance investment bonds.

If such securities are made available by an employer or a person connected with an employer, the transactions are likely to fall within the scope of the ERS regime.

Below is a non-exhaustive list of reportable events under the ERS regime:

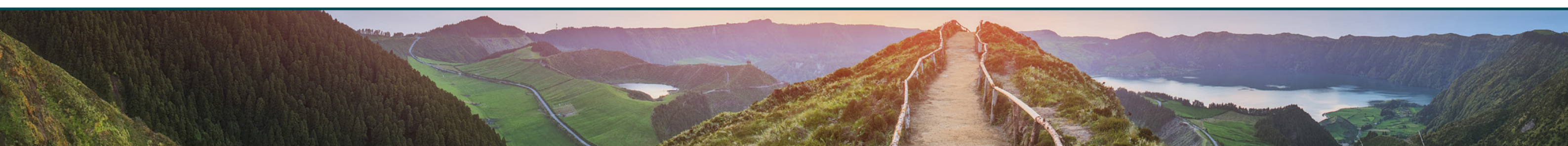
- The acquisition of securities, an interest in securities, or an option over securities due to your employment or another person's employment.
- A chargeable event in relation to restricted or convertible securities or interests in them.
- Any action which artificially enhances the market value of securities.
- An event which discharges a notional loan relating to securities or interests in them for less than market value.
- A disposal of securities or interests in them for more than their market value.
- The receipt of a benefit from securities or interests in them, which gives rise to a taxable amount as employment income, or would do so but for the relief available to research institution spin-out companies.
- The assignment or release of a securities option acquired by reason of employment (employment-related securities option).
- The receipt of value for undertaking not to acquire securities pursuant to an employment-related securities option, or receipt of value for undertaking to grant the employment-related securities option to another person.

Annual returns may also be required in respect of tax advantaged schemes:

- Share Incentive Plans (SIP)
- Save As You Earn (SAYE)
- Company Share Option Plans (CSOP)
- Enterprise Management Incentives (EMI)

The deadline for reporting 2022/23 employment-related securities transactions is **6 July 2023** but reporting must be undertaken via HMRC's online system. It can take time to register on the system and so this should be undertaken as soon as possible. Late filed ERS returns may incur penalties and be a red flag on any future business sale.

If you are aware of any transactions between 6 April 2022 to 5 April 2023, which you think may be reportable under the ERS regime, then please get in touch with your usual contact or one of our Business Tax experts for further advice.



Share Scheme Changes

The Spring Budget 2023 introduced a couple of welcome changes to HMRC approved share schemes.

a) EMI

Effective from 6 April 2023

The rules governing EMI have been simplified to facilitate easier compliance. Companies will no longer be required to detail restrictions on shares within the EMI option agreement, nor will they need to confirm that an employee has completed a working time declaration at the time of EMI option issuance. Please note, this amendment does not negate the necessity of the working time requirement itself.

Coming into effect from 6 April 2024

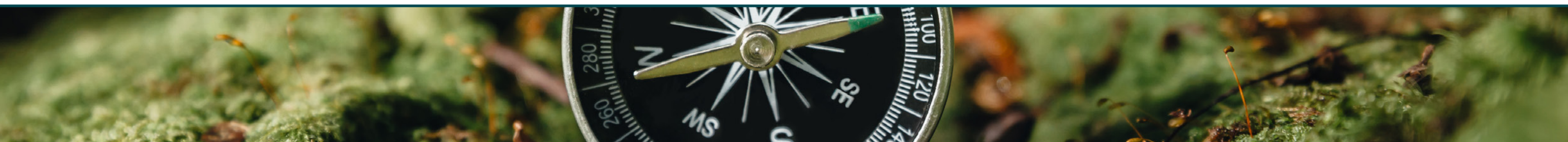
Further changes to the EMI scheme involve extending the notification period for an EMI option. Instead of the current 92 days post-grant, companies will have until 6th July following the end of the relevant tax year to notify. Legislation detailing these changes will be issued separately, with its impacts elaborated upon at that time.

b) CSOP

Effective from 6 April 2023

Companies that qualify will now have the capacity to distribute up to £60,000 of CSOP options to their employees, marking a significant increase from the existing limit of £30,000. Presently, for companies with more than one type of ordinary share capital, the shares incorporated into a Company Share Option Plan must originate from a class deemed as 'worth having'. This categorisation is typically assigned to either open market shares or employee-control shares. However, starting April 2023, this 'worth having' stipulation will be automatically lifted, eliminating the necessity to amend existing share scheme plans.

It should be noted that any unexercised options awarded prior to 6 April 2023 will also benefit from these adjustments pertaining to the share options limit and share class restrictions.



2 Corporation Tax

From April 2023, most companies will have experienced a 6% increase in their rate of corporation tax, with the main rate of corporation tax rising to 25%.

This substantial change in rate, in addition to the reintroduction of the small companies profits rate and the broadening of the tax associates definition, requires a more comprehensive approach to planning for corporation tax obligations.

This includes both the amount of tax due and timing of payment, as well as evaluating the most efficient use of any tax losses brought forward. Consequently, the optimal tax position may now be less apparent than it was prior to the rate change.

Corporation Tax Rate

From April 2023 companies with taxable profits in excess of £250,000 (upper limit) will now be liable to corporation tax at a rate of 25%. Companies with profits below £50,000 (lower limit) will still be liable for corporation tax at 19%.

The upper and lower limits are reduced by the number of associated companies (see below) and pro-rated for the length of the accounting period where it is less than 12 months. Companies with profits between the upper and lower limits will be liable to corporation tax at a rate between 19% - 25%, with the marginal effective rate of tax being 26.5% for small companies with profits that fall between these limits.

Quarterly Instalment Payments - Associated Companies

The threshold for taxable profits, above which UK companies have to pay tax via quarterly instalments is £1,500,000.

Prior to April 2023, the £1.5m threshold needed to be divided by the number of 51% global group companies. While the quarterly instalment profit thresholds are unchanged, for accounting periods starting on or after 1 April 2023, the threshold is now divided by a potentially larger number of companies, the number of associated companies, which has a much broader definition than "51% global group" companies.

Broadly, companies are associated if one controls the other or they are under the common control of the same person (or persons). The definition of control can be broad, but would normally mean shareholder control. Associated companies clearly encompass all companies in a corporate group, controlled by the ultimate parent company, but could now also include companies within separate corporate groups but controlled by the same person.

We can help you assess your company's associated companies position and consider whether it can be rationalised in order to manage cash flow on corporation tax payments.

Carried-Forward Losses

It is no longer necessarily the case that companies should use all carried-forward losses as soon as possible and to the maximum extent. Companies and groups with the potential to utilise carried-forward losses prior to April 2023 need to assess if it would be beneficial to delay utilisation of such losses until post April 2023 to save tax at 25%.

The time value of money also comes into play with considerations such as the need to compare tax at 19%, in relation to the profits of an earlier year, which will be due earlier, with tax saved at the higher rate of 25% in relation to the profits of a later year, which would be due at a later date.

Navigate the Compliance

Ensure your company is pro-actively planning for the impact of the corporation tax rate rise and change to the associated company criteria impacting the quarterly instalment regime, so that it doesn't have unplanned tax liabilities or unexpected interest costs.

3 Corporate Criminal Offence (CCO)

It has now been over five years since the introduction, via the enactment of The Criminal Finances Act in 2017, of the Corporate offences for failing to prevent criminal facilitation of tax evasion ('CCO').

As many readers will be aware, CCO is applicable to all companies and partnerships, regardless of their size or industry.

According to HMRC's update of 26 January 2023, there are currently nine live investigations underway, with 26 live opportunities under review and 77 cases that have been reviewed and rejected. The investigations span eleven different business sectors.

Enquiries can be intrusive, including searches by HMRC officers and Court demands for documents.

Failure by a business operating in the UK to take reasonable steps to comply with this legislation can expose the business to criminal prosecution, which could lead to unlimited fines, trading sanctions and significant reputational damage. Furthermore, compliance with the legislation is always considered as part of any due diligence processes and should therefore be addressed up front by any business that may be en route to a transaction.

How Can We Help?

The only defence available under the CCO is for a business to be able to demonstrate that it has taken reasonable steps to prevent tax evasion or the facilitation of tax evasion.

Our Business Tax specialists have assisted a wide range of businesses to comply with their requirements under this legislation. We would be happy to discuss how your business should respond to this legislation which should include the following:

- Risk Assessment: We can assess your company's exposure to CCO risks and identify areas of vulnerability.
- Prevention Policies: We can help you develop and implement tailored prevention policies and procedures to address identified risks.
- Training and Awareness: We can provide comprehensive training to your employees and associates, ensuring they understand the importance of compliance and their role in preventing CCO.
- Ongoing Monitoring and Support: We can conduct regular reviews to ensure your prevention measures remain effective and up-to-date.

4 Group Structuring

There can be a number of advantages to be gained from simplifying your group structure, which can lead to enhanced efficiency and potential tax benefits. Below we have set out some of the areas that should be considered by UK companies and groups.

Possible Actions for Simplifying your Group Structure:

Striking Off or Dissolving Dormant Entities

Removing dormant entities decreases administrative burdens and compliance costs, streamlines your group structure, and offers a clearer view of your overall business performance.

Releasing Intercompany Loan Balances

Releasing or restructuring intercompany loans can result in a more straightforward financial reporting process and reduce the potential risk of tax disputes related to transfer pricing and thin capitalisation. However, if loan releases are not correctly structured, there can be unintended tax consequences, therefore taking advice before restructuring loan balances is essential.

Demerging Entities

Separating entities with distinct business operations can improve management focus, boost operational efficiency, and potentially unlock or safeguard Business Property Relief (BPR) benefits for Inheritance Tax (IHT) on the trading aspects of a business.

Impact on Corporation Tax Instalments

By simplifying your group structure and removing companies, you may reduce the number of associated entities for the determination of whether your company should be paying tax by instalments. This can potentially result in cash flow benefits and reduced administrative efforts related to tax payments.

We have worked with many businesses on simplifying their group structures and achieving these benefits. Our team of experts can help you navigate the complexities of your group structure to identify potential opportunities for simplification and maximise efficiency and tax advantages.

5 Exit Strategies

Exit planning is a pivotal milestone for many business owners. It involves developing a comprehensive strategy to sell or transfer the ownership of a company or underlying trade in the most tax-efficient manner.

Eye To The Future

Considering your future objectives is important, as this will help to determine the optimum disposal strategy and any pre-sale restructuring which might be necessary to achieve this.

This might include demerging different activities within a company or having an appropriate holding structure in place. It would also include maximising the tax reliefs which are available for business disposals, such as Business Asset Disposal Relief ('BADR') (10% CGT rate on first £1m of lifetime gains) and Substantial Shareholding Exemption for corporate shareholders (exemption from corporation tax).

Such reliefs are typically targeted at trading businesses, but they do have their own specific requirements and it is important to be aware of these and ensure that they are met. In addition, it may be possible to maximise the value of such reliefs with pre-planning.

There are also wider tax issues, such as Inheritance Tax, which may also factor into strategies about passing wealth onto the next generation.

A Capital Event?

At present, CGT is 20% for gains on shares (or 10% with BADR), compared to a 45% top rate of income tax.

Realising a capital gain on the disposal of a company is attractive from a tax perspective, as opposed to being subject to income tax rates.

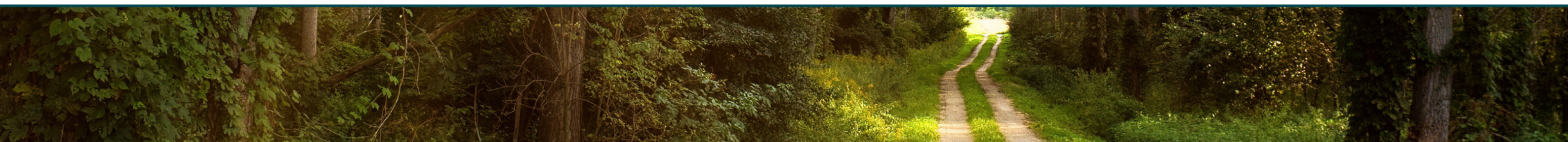
In recent years, there has been a lot of speculation at successive Budgets that the rates of tax might be harmonised or that CGT rates might be increased. Whilst this has not come to fruition, with the prospect of a change in Government at the next general election, this is an area to watch, particularly as Labour deputy leader Angela Rayner has recently highlighted the disparity between the rates of income tax and CGT.

Incentivising Management

A motivated and highly performing workforce will help to enhance the value of a business and its attractiveness to potential buyers.

Further, many business owners intend to reward key members of staff following an exit event, either through gifting them a percentage of shares or the payment of a bonus, as a recognition of loyal service up to and including the exit process.

Such rewards are generally subject to income tax and not particularly tax efficient. However, if this matter is considered sufficiently in advance of an exit, then it may be possible to implement tax advantaged share schemes such as Enterprise Management Inventive ("EMI") or even allow for simple gifting of shares before the value of an upcoming liquidity event is baked in.



Stay One Step Ahead

The old adage rings true, being forewarned is forearmed. During a business disposal, many buyers will undertake detailed due diligence on the business being sold, including financial and tax due diligence.

It is therefore advisable to undertake some form of vendor due diligence or a business health check in advance of starting a sales process, so that potential issues can be identified and resolved.

When significant issues are uncovered during the sales process, this can lead to buyers chipping away at the price and could even lead to the collapse of a deal.

Having The Right Support

Exiting a business can be a turbulent, stressful, intense but lucrative and rewarding process. Deals can move rapidly, and critical decisions need to be made quickly. Business owners can come under a lot of pressure from buyers and their advisers. Therefore it is essential that business owners also have a capable and experienced team around them, to help them navigate the process and pitfalls along the way.

Remember, once a sale process has started, it is often too late to implement effective tax planning in order to maximise tax efficiencies. Therefore, in addition to having the right team, it is beneficial to initiate discussions with your team well in advance in order to prepare early, plan strategically and maximise returns.

We have worked with a wide range of entrepreneurs and business owners on planning for a business exit, and would reiterate that it is never too early in the exit process to commence a discussion on the tax implications of the exit.

6 International Matters

UK businesses with international operations must remain vigilant about potential tax risks involving transfer pricing, the establishment of a permanent overseas taxable presence (PE), and the administration of overseas payroll and share schemes. Inadequate management of these risks can lead to substantial tax liabilities and penalties.

Transfer Pricing Considerations

UK companies transacting with overseas related parties should be mindful of transfer pricing risks involved in such arrangements. HMRC is increasingly attentive to this issue and aims to ensure that international businesses pay their appropriate share of tax in the UK by pricing at arm's length.

We advise the adoption a proactive stance on transfer pricing compliance and maintaining thorough documentation and support for your transfer pricing policies. Our team of specialists can assist in assessing your transfer pricing risks and formulating strategies to minimise them. This is particularly important in respect of transactions with certain low-tax territories, where the small and medium sized enterprise exemption may not be available for transfer pricing.

Furthermore, anti-profit fragmentation rules would apply to any business that artificially diverts UK profits to low taxed jurisdictions and should be considered alongside transfer pricing requirements.

Preventing Overseas PE Creation

UK companies with employees working abroad should be cautious about inadvertently establishing a PE in the foreign jurisdiction, which can lead to extra tax liabilities, compliance burdens, and reputational damage.

We encourage a detailed evaluation of your international operations and the implementation of suitable policies and procedures to mitigate the risk of PE creation. Our team can guide you in devising strategies to minimize this risk.

Overseeing International Payroll and Share Schemes

UK businesses employing or contracting individuals abroad must also consider the tax risks tied to managing international payroll and share schemes. This complex area, if not handled properly, can result in significant tax liabilities and compliance challenges.

We recommend consulting with professionals about managing your international payroll and share schemes to ensure compliance with local tax laws and regulations. We can help you develop and execute effective risk management strategies.

7 Close Companies

A close company is a UK company controlled by five or fewer shareholders, or any number of shareholders who are also directors.

There are several tax rules specifically applicable to close companies. Here are some of the most commonly encountered:

Loans to Participators

If a close company makes a loan to a shareholder, the company could be liable to a corporation tax charge, known as "loan to participators' tax" based on the outstanding loan balance. These rules are designed to target circumstances where a shareholder extracts funds from a company on a temporary basis without receiving dividends (which would be subject to income tax).

With the current loan to participators' tax rate at 33.75%, failure to carefully manage the timing of loan repayments from shareholders could, depending of the size of the loan, result in a significant cash flow disadvantage for the company.

If the shareholder repays their loan to the company (subject to 'bed & breakfasting' rules) within nine months of the company's year-end, then the loan to participators' tax is not due. However, missing this nine month deadline, even by a single day, will result in the company having to incur a 33.75% tax charge, which is payable to HMRC from this date and is not reclaimable until nine months after the accounting period in which the loan is repaid to the company - so a minimum of 12 months later.

The 'bed & breakfasting 30 day rule' anti-avoidance provisions prevent shareholders repaying their loan just within nine months after the company's year-end and then subsequently re-borrowing or taking another loan from the company shortly afterwards.

Loans made to full-time directors or employees with an interest of 5% or less in the company where their total loans outstanding are less than £15,000 are excluded from the rules. Also excluded are trade debts (with credit terms not exceeding the lower of third party debtor terms or six months) and loans made by a company carrying on a business of lending money.

Late Paid Interest

Companies usually receive tax relief for expenses on an accruals basis. The late paid interest rules can postpone tax deductions for related party interest costs which are not settled within 12 months of the end of a company's accounting period.

These rules concern loans from connected parties who are either not subject to UK corporation tax, such as individuals, or non-resident companies (based in low-tax jurisdictions). Determining when interest is considered "paid" can be complex, especially when cash transfers aren't involved and only book entries are made in loan accounts.

With the corporate tax rate now at 25%, deferring interest payments subject to these rules may be advantageous in order to obtain tax relief at a higher rate. However, anti-avoidance measures surround the late paid interest rules, so it is essential to consider their applicability based on your company's specific circumstances.

Close Investment Holding Companies

A Close Investment Holding Company ('CIHC') is a close company which is an investment company (i.e. is not a trading company), except for property rental companies letting to third parties, or holding/ financing companies.

The most common CIHC will be a company that lets property to a related party, even if it is on a commercial basis.

CIHCs are not eligible to the small companies rate of corporation tax of 19% and so from April 2023 are now liable to corporation tax on their profits at a flat rate of 25% irrespective of their level of profits.

We work with many close companies to manage these issues and would advise that any close company consults on the impact of these rules.

8 R&D Tax Credits

As the landscape of R&D tax incentives continues to evolve, it is essential for UK companies to stay informed and adapt to change, ensuring they don't miss out on valuable tax incentives.

Following concerns that R&D tax incentives are being abused through fraudulent claims and not representing value for money to taxpayers, changes have been introduced to the claims process, the relief provided by the schemes, and efforts made to make the schemes more UK-centric.

In addition, there are other tax incentives available to innovative companies, such as the Patent Box, which companies should ensure they are not missing out on.

Under the Microscope

In our experience, HMRC is scrutinising R&D claims more closely, with an increased degree of enquiry action. Incorrect or erroneous claims could lead to tax credits being clawed back, and claimants exposed to significant penalties.

To maximise the chance of a successful claim and minimise tax risk, claims must be carefully prepared, taking into account the numerous recent rule changes and ensuring they are robustly supportable.

Here's a summary of key changes to keep in mind:

Closing the Gap between Large and SME Schemes

Previously, the SME scheme offered an additional 130% enhanced deduction for qualifying expenditure, with loss-making companies able to surrender R&D losses for a 14% tax credit. This was worth up to 33p for each £1 of R&D expenditure.

The Research and Development Expenditure Credit (RDEC) scheme (applicable where the SME scheme cannot be used) offered a 13% taxable credit, worth up to 11p for each £1 of R&D expenditure.

From April 2023, the enhanced deduction under the SME scheme has dropped to 86%, and the tax credit for surrendered R&D losses has decreased to 10% (except for knowledge-intensive companies). Simultaneously, the RDEC scheme's taxable credit increased to 20%.

These changes reduce the value of an SME scheme claim to 19p for each £1 of R&D expenditure, while increasing the value of an RDEC claim to 15p for each £1 of R&D expenditure.

These adjustments aim to reduce the disparity between the schemes, potentially leading to future simplification and harmonisation.

New Qualifying Expenditure

From April 2023, qualifying categories of R&D expenditure have expanded to include cloud computing and dataset costs, reflecting the evolving nature of expenses incurred by innovative companies.

Advance Notification

From April 2023, companies making a claim for the first time or not having made a claim in the last three

years will need to notify HMRC of their intention to make a claim within six months of the end of the accounting period to which the claim relates (this being the claim notification period). Failure to meet this condition will result in HMRC disallowing the claim. This introduces an additional administrative requirement and reduces the time companies have to identify R&D activities.

R&D tax advisers must also be disclosed, as HMRC will target claims involving advisers considered to promote dubious claims. It is crucial to work with a trusted and reputable R&D tax adviser.

Foreign Expenditure

In the 2023 Budget, the proposed restriction on expenditure for foreign subcontractors or externally provided workers qualifying for R&D has been delayed from April 2023 to April 2024.

This extension allows businesses more time to consider potential operational changes as a result of the upcoming change.

Patent Box

The UK's Patent Box regime offers a 10% Corporation Tax rate on profits deriving from patented products or processes.

The regime is intended to encourage investment in R&D and commercialisation of patented technology.

Given the increase in corporation tax rates, the regime has become comparatively more valuable and could form an important part of the R&D tax incentives available to innovative UK companies with patented or patent pending technology.

9 Capital Allowances

Capital allowances offer tax relief on eligible capital expenditure, translating into notable tax savings. Capital allowances have been the subject of numerous recent changes, to align with policy objectives and incentivise certain behaviours.

It is essential that businesses stay informed of changing rules, navigate potential pitfalls and maximise the tax relief they can claim.

Introducing Full Expensing

Capital allowances are usually given as either a one-time 100% deduction in the year of expenditure through the Annual Investment Allowance (AIA) or through writing down allowances (WDAs) at 18% or 6% per annum on a reducing balance basis, based on the expenditure type.

If the AIA is unavailable or has already been utilised, then tax relief through WDAs can span many years. This presents a potentially significant cash flow disadvantage.

However, companies can now claim a 100% first year allowance (FYA) for main rate qualifying expenditure incurred on or after 1 April 2023 but before 1 April 2026. This means that companies can get full tax relief when the capital expenditure is incurred.

A Continuation of Super Deductions?

From 1 April 2021 to 31 March 2023, companies could obtain a 130% super deduction on main rate qualifying expenditure (such as machinery, computers and office furniture), or a 50% first year allowance on qualifying special rate assets (such as expenditure on integral features, such as lighting and electrical systems, water systems and long life assets).

Super deductions were introduced as a Covid-19 recovery measure, to encourage companies to invest in plant and machinery, to boost productivity and efficiency in the UK.

Although the 130% super deduction has now ended, the full expensing regime is effectively a continuation of the relief which super deductions provided.

A 130% deduction with a ct rate of 19% gave effective tax relief of 24.7%. Instead, full expensing now gives effective tax relief of 25%, following the increase in corporation tax rates in April 2023.

The 50% first year allowance on special rate assets (subject to some exclusions) has been extended to April 2026, in line with the full expensing for main rate expenditure.

Annual Investment Allowance

The AIA was retained at £1m per annum, having been due to drop to £200,000 per annum from April 2023.

Despite the super deductions which were available and the full expensing which has been introduced, the AIA remains a valuable feature of the capital allowances regime.

It is not just restricted to companies, but also available to partnerships (though not mixed or corporate partnerships) and sole traders.

Additionally, as it is also available on special rate expenditure (subject to some exclusions), it allows for a 100% deduction to be taken in the year of expenditure, as opposed to a 50% first year allowance or WDAs of 6% per annum.

How Do Cars Fit Into the Equation?

Although WDAs have long been available on cars, they were typically excluded from the AIA, meaning that 100% tax relief was not available on cars in the year of expenditure.

However, in order to incentivise the continued uptake of electric cars, a 100% first year allowance is available for electric cars and zero CO_2 emissions cars. A similar relief is also available until March 2025 on expenditure on electric vehicle charging points.

The comparatively generous capital allowances available on electric cars, combined with the current benefit in kind rate (2% of list price until April 2025) for electric cars, makes them a potentially attractive proposition.

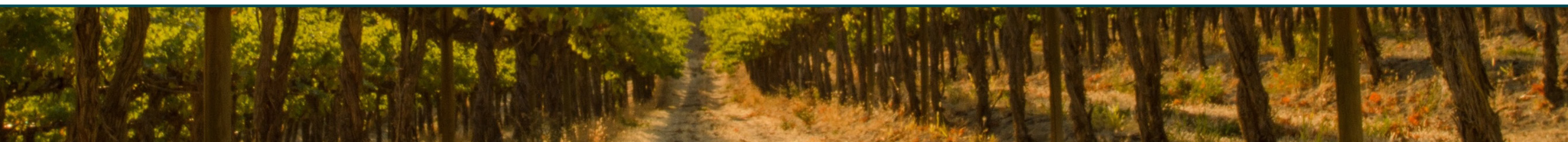
What About Building Work or Buying Property?

There was a notable gap in the capital allowances regime for expenditure on works of a structural nature, such as constructing a building or fitting out an office, which often included a significant proportion of ineligible expenditure, on which no capital allowances could be claimed.

However, since 2018, it has been possible to claim the structures and buildings allowances on the construction, renovation or purchase of a commercial property where all construction contracts are signed on or after 29 October 2018.

The allowance is currently 3% per annum of qualifying expenditure. Although this percentage may seem relatively modest, it can offer substantial tax relief in instances where considerable capital outlays are made on properties.

In addition, if you are considering buying or selling a commercial property, it is very important to consider potential capital allowances and the extent to which the benefit of these will pass with the property purchase.



10 VAT

There have been a number of recent changes to the VAT rules, which are outlined below, in order to help businesses stay informed.

VAT Administration – Penalties and Interest

Reform of VAT Penalty Regime

HMRC's previously delayed new VAT penalty system was finally introduced on 1 January 2023 and applies to VAT periods beginning on or after 1 January 2023. The new points based system replaced the previous default surcharge system.

Under the previous system, the late submission of VAT returns or payment of VAT was penalised by a penalty calculated as a percentage of the tax due, up to to a maximum of 15% based on late submission history. However, the surcharge did not increase according to how late the return was submitted.

This resulted in disproportionately large penalties for businesses who submitted their returns late, perhaps due to a simple error. This in turn historically led to numerous tribunal appeals on the financial penalties issued.

The New Penalty System

HMRC is no longer issuing an automatic financial penalty for late submissions, but instead issues a certain number of points before a financial penalty is issued.

The intention is that this new points-based system should be more proportionate, penalising only those taxpayers who persistently miss their submission obligations rather than those who make occasional mistakes.

Late Submission

HMRC will issue a single penalty point for a late submission of a VAT return and, once the business has exceeded a points threshold for multiple missed returns, a flat penalty of £200 will be imposed for that return and any subsequent late returns.

The points threshold for penalties is based on the frequency of submission of the VAT return and is set at:

- Annual returns: 2 points
- Quarterly returns: 4 points
- Monthly returns: 5 points

Points will have a lifespan of two years, after which they will expire. However, if the taxpayer has reached the penalty threshold, then taxpayers must demonstrate a period of sustained compliance first.

Late Payment Penalty

In addition to the above, there are also late payment penalties which apply after 15 days from the due date

for payment. This can amount to 8% of the unpaid tax, if this remains outstanding 31 days after the due date.

Late Payment Interest

Late payment interest has also now been introduced and applies from the VAT payment due date until the date that full payment of that tax is received by HMRC.

In order to avoid these late payment penalties, ongoing daily charges and interest charges, businesses who are having difficulty paying should consider approaching HMRC in order to agree a “time to pay” arrangement.

Real Estate - Changes to VAT Option to Tax procedures

HMRC made significant changes to the way it deals with VAT options to tax (OTT) from 1 February 2023.

For an option to tax (sometimes known as election to waive exemption) in respect of land or property to be valid, it must be notified to HMRC within 30 days of the decision to opt to tax. If a transaction would otherwise be subject to VAT, and the intention is for it to be a VAT-free Transfer of a Going Concern (TOGC), the notification must be made to HMRC by the completion date.

Prior to 1 February 2023, HMRC would have formally ‘acknowledged’ the option to tax after carrying out checks, and would also confirm the existence of any options to tax notified to them, if requested.

From 1 February 2023, HMRC will no longer issue an acknowledgment of an option to tax. Instead, an automated response is received from HMRC’s email mailbox. This automated response should be retained as part of the business’s VAT records and be used as evidence of the notification to HMRC if required, such as in the event of a property transaction.

A notification sent to HMRC in any other way (e.g. by letter) will not receive an acknowledgement or receipt, so email submission would be recommended.

HMRC will also now only confirm if a property is opted to tax in much more restrictive circumstances.

Postponed Accounting for Import VAT

Businesses who are not already using the Postponed Accounting for Import VAT (PIVA) system for their imports may wish to consider doing so.

The PIVA system was introduced on 1 January 2021 and applies equally for imports into the UK from both EU and non EU countries.

PIVA allows for import VAT to be accounted for on the importer’s VAT return instead of being paid over to HMRC and claimed back later. Businesses which are entitled to recover their import VAT in full will see no net VAT payment on their VAT return, resulting in a cash flow saving.

Please contact our VAT specialists for advice on any of the above matters.

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