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Adviser

Huddart
Chartered Accountants and Business Advisors

HMRC's Trust Registration Service (TRS)

With a registration deadline looming, and urgent action needed, check now: could the Trust Registration Service impact you?

Part of a European initiative to tackle money laundering and the financing of terrorism, the rules around the TRS now have consequences for many more trusts and trustees than originally anticipated. This means trustees able to disregard the requirements previously should reassess their position.

Initially, the requirement was for all express trusts with a UK tax liability to register with the TRS. An 'express trust', according to HMRC, is a trust deliberately created by a settlor, usually in the form of a document such as a written deed or declaration of trust, rather than, for example, one created by an act of law.

The requirement now, however, is for all UK express trusts to register, whether they have a tax liability or not. The only opt out is if they fall within specific exclusions. Exclusions cover express trusts considered lower risk by HMRC, such as charitable trusts. Even trusts in the excluded categories, though, must register if they have a liability to UK tax. There are also provisions for non UK trusts: if this is of relevance to you, we can advise further.

In an administrative quirk, trusts in existence on 6 October 2020, but which have since been wound up, are also within scope. Such trusts must register and then be removed from the register.

We recommend taking stock now. Is it possible that you have been involved in setting up a trust, or acting as a trustee in the past? What constitutes a trust is not always intuitive. Some arrangements may not immediately spring to mind as being in the trust category, such as opening a cash deposit account for a minor. In fact, this could constitute a bare trust: although the good news is that this is one of the TRS exclusions. Investments such as stocks and shares held on trust for the benefit of a minor, on the other hand, are not excluded. For the avoidance of doubt, the rules do not apply to Child Trust Funds, nor Junior ISAs.

The deadline to register non taxable trusts created on or before 6 October 2020 is 1 September 2022. Non-taxable trusts created after 6 October 2020 must be registered within 90 days of their creation or becoming liable for tax, or by 1 September 2022 (whichever is later). **Please remember we are on hand to assist with the registration process and advise on the information needed to do so.**

Covid-19 support and a letter from HMRC?

HMRC is still reviewing claims made for financial support during the pandemic.

Most recently, HMRC compliance activity has focused on claims to the fourth and fifth Self Employment Income Support Scheme (SEISS) grants, and it has been writing to those who received either or both of these grants, if their tax return for any of the years 2016/17 to 2019/20 has been amended after 3 March 2021, and that amendment impacts their entitlement to the grants. Amendments in this context include corrections by HMRC, taxpayer amendments and HMRC amendments following an enquiry, but not contract settlements, revenue assessments or charges raised.

Where such a tax return amendment means the level of grant would fall by more than £100, or would effectively render someone ineligible for the grant, there is a requirement to repay the relevant amount to HMRC. There is an added complication in that there were two payment bands for the fifth SEISS grant: a higher 80% rate and a lower 30% rate. An amendment to the tax return therefore, could potentially move a claimant from one band to the other, resulting in SEISS overpayment.

HMRC's current letters include a formal tax assessment, and the correct procedures need to be followed in order to avoid penalties. If you receive such a letter and agree HMRC's figures, payment is needed within 30 days of the due date. In cases of financial difficulty, time to pay may be arranged with HMRC. If you disagree, a formal appeal should be made in writing within 30 days of the date of the letter. In short, if you receive such a letter, it's important to act, and promptly: please do contact us for further advice.

Capital Gains Tax: negligible value claims

What happens if you own shares that have become all but worthless – say you bought shares at the start of the pandemic, and their value has plummeted?

In these circumstances, a negligible value claim may work to your advantage. The claim allows you to crystallise a capital loss and use it against other capital gains, or potentially against an income tax liability.

How it Works

'Negligible value' is not defined in statute, but HMRC interprets it as meaning 'next to nothing', and the claim means you are treated as having sold an asset, and then immediately reacquired it at the time of the claim, for the value specified in the claim. That value will usually be nil. To make a claim, the asset must, however, have become of negligible value since you acquired it: a claim cannot be made on an asset worth nothing when it was acquired.

It is possible to specify an earlier date in the claim, potentially giving a more elastic timeframe. The provision can thus have effect for up to two years before the start of the tax year in which the claim is made. To make such a retrospective claim, the asset must have been owned at the earlier specified time, and have become of negligible value on, or by, the earlier specified time.

There are strict conditions to be aware of. The asset must still be in your ownership at the date of the claim. If the company has been dissolved, you are automatically treated as having made a disposal of the shares at the time of dissolution. In consequence, you cannot make a negligible value claim on or after the date a company has been dissolved, since you no longer own the shares. All of this means that the timing of claims is particularly important.

Where you want to make a claim for shares and securities for a company in liquidation or receivership, there is specific information HMRC will require to consider the claim, and we can advise further here. HMRC maintains on **gov.uk** a list of shares and securities in companies previously quoted on the London Stock Exchange that it accepts as being of negligible value. Note however, that a claim is still required even if your shares are on the list. There is no published list for unquoted companies, companies formerly quoted on the Alternative Investment Market and PLUS Market, or non-UK companies.

Here to Help

Claims are made either via the tax return, or by writing to HMRC. We would strongly recommend discussion in advance of the end of the tax year, in view of the importance of timing and the possibility of backdating claims. We are always on hand to provide in depth advice on the optimal approach to any capital loss, whether for an individual or a company.

Talking about capital allowances

What comes next for capital allowances? The enhanced Annual Investment Allowance (AIA) and super deduction come to an end on 31 March 2023 and the government is discussing the next step, prior to the Autumn Budget.

With the current regime less favourable than some other countries', the government has put various options on the table. They include increasing the permanent level of the AIA; increasing the rates of writing down allowances; introducing general first year allowances for qualifying expenditure on plant and machinery; introducing an additional first year allowance or introducing permanent full expensing.

The proposal as regards the AIA is to increase it permanently to £500,000. As you know, the AIA allows most businesses to deduct the full amount of qualifying expenditure, up to a set level, to arrive at taxable profits. It can be claimed on most plant and machinery expenditure, but not expenditure on cars.

It's worth noting that the AIA is currently due to drop back to £200,000 from 1 April 2023 and if your business has an accounting period that straddles this date, you may need to consider the impact of the transitional rules that will apply. In such cases, the timing of capital expenditure will be particularly important. To effect maximum relief, expenditure will be best incurred before 31 March 2023, and in some circumstances, a claim to the super deduction (available only to incorporated businesses) may be preferable. If you are looking at significant capital expenditure, do please talk to us about the most tax efficient way to achieve it.

Planning is always important to get the optimal result when investing in your business. We would be delighted to guide you through any forthcoming change to the rules on capital allowances, or help you maximise the opportunities still available under the current temporary provisions.

Cameras, action and a happy tax ending

The Enterprise Investment Scheme (EIS) is one of four venture capital schemes designed to allow certain types of small, higher risk, unquoted trading companies to raise capital.

The schemes offer significant tax reliefs to individual investors buying new shares in the company. Availability of relief under the EIS was centre stage in a recent case at the tax tribunal brought by Inferno Films Ltd. Inferno, a film production company based in Wales, needed funding to make a psychological thriller, 'The Ballad of Billy McCrae'. Spoiler alert: Inferno won.

In essence, the EIS offers several forms of relief. Chargeable gains on any asset can be deferred by making a qualifying share subscription. The investment itself can attract income tax relief and a capital gains tax exemption on gains made when the shares are disposed of. Income tax relief is particularly generous, at 30% on investments up to £1 million a year, and £2 million a year, if at least £1million of that is invested in knowledge intensive companies.

A company must meet stringent conditions for relief to be available to an investor. For example, the investment must generally be made within seven years of the company's first commercial sale, and the amount of capital raised in any 12 month period is limited to £5 million (£10 million for knowledge intensive companies).

For Inferno, the condition under the spotlight was the risk to capital condition. This requires the company to use the money for growth and development, and stipulates that the investment should entail the risk of the investor losing more capital than they are likely to gain as a net return.

HMRC argued that Inferno failed here because it did not have 'objectives to grow and develop its trade in the long term'. Specifically, it highlighted Inferno's lack of employees and the fact that it subcontracted many of its activities. It suggested that Inferno was at best, a vehicle to provide finance for a series of individual projects. Inferno said its approach conformed to film industry norms and was the only realistic course of action for a small start-up venture. Its argument was upheld by the tribunal, which found that sufficient long term aims did exist, as evidenced by its commitment to the Welsh film industry.

Whether you are an investor or a company looking for inward investment, we would be pleased to explain the venture capital schemes in more detail.

For help or advice with any of the topics raised in this newsletter, please do not hesitate to get in touch on 0161 703 8353 or email hello@jeffreyahuddart.co.uk.