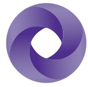
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Tax and legal update

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This issue:
- reducing your income tax liability for 2016;
- are you involved with selling goods to private individuals in other EU member states?;
- chargeable persons - changes to income thresholds; and
- Designated Activity Company (DAC) and stamp duty relief.

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Reducing your income tax liability for 2016 – have you considered making a pension contribution?

With the income tax **deadline** for self-assessed individuals fast approaching on **31 October** (14 November for those who file online), many individuals will be hoping to reduce their income tax liability for 2016. One way of doing so is by making a personal contribution to an approved pension in respect of relevant earnings in 2016. Personal pension contributions are eligible for full tax relief at your marginal rate, subject to specified limits.

Further benefits

The current rate of exit tax on savings and investments is 41%, while Deposit Interest Retention Tax (DIRT) is now 39% and Capital Gains Tax (CGT) is 33%. Investment growth achieved within a pension fund is exempt from these taxes, giving your fund greater capacity to grow over time. Pension income in retirement is subject to income tax at your marginal rate, USC and PRSI (if applicable). However, you are entitled to receive a tax free lump sum when drawing down your pension funds at retirement. You can receive a lump sum at retirement of up to €200,000 tax free, with an additional €300,000 subject to tax at the standard rate (20%).

Are you involved with selling goods to private individuals in other EU member states? If so, you should be aware of the distance selling rules.

Under the general rule in section 29(1)(a) of the VAT Consolidation Act 2010, the place of supply of goods which are dispatched or transported, is the place where the dispatch or transportation begins, eg transportation of goods from Cork to London, the place of supply for VAT purposes is Ireland.

However, this VAT treatment does not apply if the transaction is regarded as a 'distance sale' of goods to non-VAT registered persons in another EU member state. As per section 30 of the VAT Consolidation Act 2010 which relates to distance selling, the place of supply for VAT purposes is where the dispatch or transportation ends, where the supplier fulfils the following criteria:
- dispatches physical goods;
- to persons who are not VAT registered (i.e. members of the public);
- in another EU member state; and
- the supplier's turnover from distance sales exceeds the threshold in the member state in question.

By way of example, the distance selling threshold in France, Spain, Greece and Italy is €35,000. The UK has a distance selling threshold of £70,000.

Once the applicable threshold in the member state of destination is exceeded, the place of supply is the country to which the goods are dispatched, ie the country of destination and no Irish VAT arises. As such, the supplier would be required to charge the appropriate foreign VAT on the supply of the goods to private individuals.

Grant Thornton has a wide network of indirect tax advisors across the European Union who can assist with VAT registration and compliance issues should this be relevant for you or your clients.

Chargeable persons – changes to income thresholds

Revenue recently issued an eBrief (no. 61/17) outlining the changes to the income thresholds which are applied in determining whether an individual is regarded as a 'chargeable person' for income tax purposes. A chargeable person is obliged to file a tax return annually with Revenue and to pay any balance of tax owed for that year, together with a preliminary tax payment for the following year.

Specifically, the changes are relevant to individuals with both PAYE (ie employment income) and non-PAYE income (eg rental income, trading income, dividends, deposit interest, etc.). In summary, an individual in receipt of PAYE and non-PAYE income shall not be a chargeable person, where:

- the total non-PAYE income assessable to tax does not exceed €5,000 (previously €3,174);
- the gross non-PAYE income does not exceed €30,000 (previously €50,000); and
- the tax payable is collected via the PAYE system by coding against the individual's tax credits and standard rate cut off point.

There are exceptions to the above such as in the case of certain company directors and their spouse. The above changes are effective from 1 January 2016.

Designated Activity Company (DAC) and stamp duty relief under Section 80 SDCA 1999

The new private limited company types under the Companies Act 2014 are a private company limited by shares (LTD) and a DAC.

There are two types of DAC possible, the DAC limited by shares or the DAC limited by guarantee and having a share capital. A DAC has an objects clause that designates the type of activity for which it was formed.

As it currently stands, the provisions of the Taxes Acts have not been updated to align with the new forms of company under the Companies Act 2014 and this has led to some practical difficulties. The most common issue that is arising for practitioners relates to relief under Section 80 of the Stamp Duty Consolidation Act (SDCA 1999) with particular reference to the requirements to qualify as an acquiring company for the purposes of the relief.

The provisions of Section 80(6) SDCA 1999 are as follows:
"A company shall **not be deemed to be a target company** within the meaning of this section unless it is provided by the memorandum of association of, or Act establishing, the acquiring company that one of the objects for which the company is formed is the acquisition of the undertaking of, or shares in, the target company, **or unless it appears from the resolution**, Act or other authority for the increase of the capital of the acquiring company that the increase is authorised for the purpose of acquiring the undertaking of, or shares in, the target company."

While the provisions of the subsection above appear to allow the identification of the target by either:

- specifying the acquisition in the objects' clause; or
- the terms of the resolution authorising the increase in the share capital clearly specifying that it is for the purpose of acquiring the shares or undertaking of the target.

Revenue's Operational Manual (Part 7) on Section 80 SDCA 1999 clearly indicates that Revenue is of the view that in circumstances where a new company is used, the section requires the objects clause to provide that the object of the company is the acquisition of the target. The provisions of the operational manual are as follows:
"*A company will not be regarded as a target (particular existing) company unless it is provided in the memorandum of association of the acquiring company that, **if it is registered or incorporated for the purposes of the acquisition, it has as one of the objects the acquisition of the undertaking of, or shares in, the target company.** In the case of an increase in capital, the resolution must show that the increase is authorised for the purposes of acquiring the undertaking of, or shares in, the target company. The memorandum of association or the resolution of the acquiring company must identify the target company with reasonable certainty.*"

As a DAC is the only form of private company that has retained an objects clause, the implication is that Revenue's view is that it must be used where a new company is incorporated for the purposes of the acquisition.

The Operational Manual has been revised and updated twice since the commencement of the Companies Act 2014 (most recently in December 2016 which was subsequent to this issue being raised as part of a working group with Revenue on the Companies Act 2014) and the opportunity for Revenue to restate or review their stance has not yet materialised.

The anomaly caused by the Companies Act 2014 whereby newly formed LTDs do not fall squarely within the conditions for reconstruction and amalgamation relief under Section 80 SDCA 1999 was raised by practitioners at Taxes Administration Liaison Committee (TALC).

At the recent TALC direct/capital taxes sub-committee meeting, Revenue confirmed that LTDs are not excluded per se from relief under Section 80 SDCA 1999. While this view is not yet incorporated into Revenue Operational Guidelines for Section 80 SDCA 1999, it is arguably sufficient to negate the requirement to use a DAC solely for the purpose of qualifying for relief under Section 80 SDCA 1999.

Until the Operational Manual is updated to reflect this position, it is recommended that a prescriptive resolution is used setting out the purpose of the transaction, specifically identifying the target and including the object of the transaction (i.e. including the same information that would be included in the objects clause in addition to the usual requirements for a resolution increasing the share capital for the purposes of acquiring a target).

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