DNS Accounting Group

TAX TIPS & *News*

This issue includes updates and news on...

- Business interruption insurance claims – the latest
- The new VAT "reverse charge" and the recent "5% disregard rule"
- IR35: HMRC confirm "soft landing" in new guidance
- Supreme Court ruling: Uber drivers are not self-employed

Tax Tips and questions

- Reclaiming VAT on a garden office
- Closing your company via an MVL: Beware anti-avoidance rules
- Pension contributions for umbrella company workers
- Choosing the right structure for your rental property business

Newsletter March 2021

Welcome to March's edition of the Tax Tips & News bulletin.

I am glad to begin with some positive news about Covid-19: Clearly, we are winning the battle against the number of infections, hospitalisations and deaths, which largely are going down, and plans are already in place to open up the economy. The long-awaited summer, after a long, dark and difficult winter, is just around the corner – and very welcome it is too! Hopefully it will open out gloriously for us all to enjoy – but we must keep up our guard while the infection rates fall still further.

The talk doing the rounds at present is about how we are going to repay the debt we have built up during this pandemic. The easiest way, many feel, is to increase corporation tax, as taking this route will hit hardest the companies who have been making the largest profits. Chancellor Rishi Sunak has an extremely tough decision to make; what other choice does he have? Someone must pay, and better to take from those who are making the most than target those who have suffered terribly over the past year.

From 1st March 2021, the domestic VAT "reverse charge" is going live, and you must make sure that your software, whichever you use, is fully compatible. Introduction of the new legislation aims to tackle VAT fraud mainly in the construction industry, which in my view is long overdue.

March's newsletter covers some interesting topics: The most relevant and interesting issue we address this month is the matter of business interruption insurance claims. You should make your claim now if your insurance company has been dithering about paying out, since the Supreme Court ruling stated that businesses which suffered losses brought about by interruption to their business during the pandemic, have a right to have the claims considered by their insurance company. You should pursue this opportunity immediately if you have been affected.

IR35 never sleeps! It is the never dormant topic always in the news. Please remember, therefore, that there are important changes in the operation of the off-payroll working rules from April 2021, which requires that you make certain that your contracts have been checked and verified prior to April 2021. Help is available from our team as always, but I can see huge traction and discussion taking place in this area in the foreseeable. Make a point of contacting your agency or client to start a dialogue with them over this matter if you have not done this yet, as you definitely do not want news in the eleventh-hour that your contract falls within IR35.

Other cracking news was the outcome for Uber drivers, whereby the courts confirmed that these individuals are in fact workers (not self-employed) and thus eligible for the rights of workers. This is great news for Uber drivers, as they will be better protected and also reap the benefits of employment rights. However, eventually this will make Uber rides more expensive for the British public, as all Uber rides will become subject to

VAT and the increased cost of national insurance. The definition and blurring of the lines between employment – worker – and self-employed is so confusing; it could even become a cause of business bankruptcies. Uber, fortunately, has the money to be able to manage the costs, but they won't be happy! But what about all the many other companies that could be ruined should they have to fight this issue through the courts, loose, and then owe compensation? I can see the next in line for the same sort of legal case will be the Deliveroo workers. I find the situation is getting very tense and worrisome, and I'm not sure where this section of the so-called gig economy is going to end up. Let me remind you: If you employ people on a self-employed basis, please, please make sure that they are self-employed to the letter of the law and not workers. This is grey area, and businesses must be very careful.

This month's newsletter comes loaded with some great tax tips: Let me especially point you to the one about reclaiming VAT on a garden office, which has become a very hot topic over the past year. With many companies moving staff from their business premises to work from home due to Covid-19, this has become one of those highly sensitive areas, and extreme caution should be observed around tax avoidance rules.

I hope you enjoy reading our newsletter, and I and my team look forward to your feedback.

Wishing you an amazing March! Stay safe, and please continue to take all precautions despite the positivity we all feel right now, now that Covid seems to be coming under our control.

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Tax Tips and questions

Finally, please refer to the **Key Dates and Deadlines for March 2021** to be sure that you keep up to date with the filing deadlines for your business.

Kind regards,

Sumit Agarwal ACMA, ACA (India)
Founder & Managing Director

Business interruption insurance claims – the latest

The recent Supreme Court ruling means many businesses may be entitled to a pay out if they have been adversely affected by the pandemic, particularly where the lockdown measures announced by the government forced businesses to close.

On 15 January 2021, the Supreme Court allowed the Financial Conduct Authority's (FCA) appeal on behalf of policyholders in relation to the business interruption insurance test case relating to losses suffered due to lockdown during the coronavirus pandemic.

The judgement resolves many of the key issues faced by policyholders, and this will now lead to successful claims without the need for businesses to take up the issue individually with their insurers.

The judgment applies to policies which include any of the following clauses.

- **Disease:** Provides insurance cover for business interruption losses due to a notifiable disease within a specified radius of the policyholder's business premises.
- **The prevention of access:** Provides cover for business interruption losses as a result of prevention or hindrance of access to, or use of the business premises due to intervention by the government or public authority.
- **Hybrid conditions:** The hybrid condition combines the first two elements, whereby business interruption losses are caused by restrictions imposed on your business premises because of a notifiable disease.

If your business has suffered losses due to coronavirus, maybe because you could not access your premises or due to the trading restrictions imposed by the government, you may be due a pay out and should contact your insurance provider immediately.

More details on the case can be read here.

The new VAT "reverse charge" and the recent "5% disregard rule"

The new VAT "reverse charge" for the construction industry takes effect from 1 March 2021. Under the rules, the builder will no longer charge their customer VAT, provided the builder is VAT-registered; the supply falls within the Construction Industry Scheme (CIS); and the customer is providing onward services – in essence, this is a relationship similar to a subcontractor and contractor.

Although the general guidance remains similar to what was proposed earlier in October 2019, a new feature – the "5% disregard rule" has been added in the updated guidance. The 5% disregard rule means that the reverse charge will not apply in cases where only some of the work in a supply/invoice is subject to the VAT reverse charge and the value is 5% or less of the total value of the supply; in this case it can be disregarded, and normal VAT rules will apply.

For example, John, an electrician, takes on two jobs for a firm called Big Constructor Limited:

- John carried out work in an office space for Big Constructor Limited's client @ £250.
- John carried out installation of new electrical wiring at Big Constructor's new office premises @ £6,000.
- Big Constructor Limited is registered for both the construction industry scheme (CIS) and VAT.
- Big Constructor Limited has confirmed that they are the end-user for the new office work.

John raises his sales invoice as a single invoice on 1st May 2021. Normally, the invoice would be subject to the reverse charge because it includes some reverse charge work, but as the value of the reverse-charge work is "5% or less" of the whole invoice (£250/£6,000 = 4%), the supply will be subject to normal VAT rules; John will therefore raise an invoice for £6,250 plus £1,250 VAT.

However, had the electrical work at Big Constructor's office been, say, £325, then the reverse charge rule would have applied, because it is now more than 5% of the invoice value (£325/£6,325 = 5.1%). John will now raise an invoice without VAT and simply state that "reverse charge applies to the supply".

IR35: HMRC confirm "soft landing" in new guidance

On 15 February 2021, a briefing note was issued by HMRC to explain the compliance approach being taken to support organisations to comply with off-payroll working rules, which come into effect on 6th April 2021.

HMRC have confirmed that they intend to support businesses to pay the right amount of tax by educating them and using well-designed systems, and that they will take a "light-touch"-approach to issuing penalties. HMRC further confirmed that businesses will not have to pay penalties for inaccuracies in the first 12 months, irrespective of when they are found, provided inaccuracies have not been caused deliberately.

Further – which will come as a relief to many contractors – HMRC are committed to not use information collected under the new regime to open retrospective enquiries into returns for previous tax years, i.e. before 2021/22, unless fraud or criminal behaviour is suspected.

The guidance goes on to talk about anti-avoidance measures, where HMRC have suggested: "The scope of our compliance activity is not solely related to the application of the off-payroll working rules, but includes all arrangements that result in less tax being paid than should be the case, such as tax avoidance schemes that claim to avoid the rules."

HMRC have acknowledged that some contractors may take up permanent roles, while others may be required to work through agencies or umbrella companies, and state that they accept that these will be commercial choices and fully compliant with tax law. To quote further from the guidance, it states: "However, we will take action if contractors are engaged through artificial, contrived arrangements which are claimed to avoid the application of the off-payroll working rules or result in customers paying less tax than should be the case."

A specialist team created for the purpose will carry out compliance-check activities to ensure businesses are compliant with the off-payroll rules.

Finally, it will probably not come as a surprise that a Parliamentary question was raised as to whether the reforms would be further delayed due to the pandemic. The response from the Minister made clear that: "reform of the off-payroll working rules will be introduced on 6 April 2021. Organisations should continue to prepare for the implementation of the reform. Since the reform was delayed in April 2020, Parliament has passed legislation enacting the reform from April 2021."

The full HMRC briefing can be read here.

Supreme Court ruling: Uber drivers are not self-employed

The Supreme Court has passed the judgement that Uber drivers are workers and not self-employed, and that, therefore, they are legally entitled to the national minimum wage and holiday pay.

Uber have always argued that their drivers are regarded as self-employed individuals running their own business, thus the company was not obliged to award them any employment rights or benefits. The drivers first challenged Uber in an Employment Tribunal on the basis that they should be classed as "workers" and not as self-employed. The Supreme Court unanimously upheld the decision given by the Employment Appeal Tribunal and Court of Appeal ruling in favour of the drivers, thus awarding them basic employment rights.

In Uber's case, the decision was made on the basis that the drivers did not carry their own business undertaking, were providing a personal service, and that the Uber App exercised control and supervision over the drivers.

The decision has wider implications for the gig economy, as individuals who work for companies such as Uber are usually classed as self-employed. Employers do not have to award holiday pay, the minimum wage, or employer's national insurance contributions to the self-employed. The case will now return to the Employment Tribunal, which will decide the amount of compensation drivers are entitled to.

This leaves businesses in a position where they must rethink their hiring strategy and make adjustments to their contracts and working practices accordingly, in order to ensure that they are not hit with a surprise tax bill from HMRC or a compensation bill as a result of misunderstanding the status of their workers in law.

Although this is an Employment Tribunal case, it is built on the exact same principles that apply to IR35 or off-payroll legislation, and businesses and contractors must, therefore, ensure that their contractual agreements are correct and a true reflection of the actual terms of the engagement.

Reclaiming VAT on a garden office

Can I reclaim VAT on my Garden office? The answer to this question is, yes, you certainly can, provided that you are VAT-registered and that the cost was incurred wholly and exclusively for the purposes of the business. There are no limitations as such to the amount of VAT that one can reclaim.

There would generally be two scenarios/structures where you could meet the cost and recover the VAT:

Sole Trader/Proprietor

As a sole trader, it becomes difficult to claim VAT on the cost of a home conversion because you and the business are the same person. However, if you are a sole proprietor, the rules on recovering VAT for household costs are clear.

For example, if your home has five rooms, of which one of the rooms you have designated as an office, you can claim 1/5 of the VAT paid on gas/electricity, etc. for your house (although we do not usually recommend you use a room 100% of the time for business purposes as you could get caught by Capital Gains Tax (CGT). However, each case must be judged on its own merits, but there are several common principles that give an indication regarding VAT recovery. It is also possible that any potential CGT will fall within the annual exemption.

Limited Company

For a limited company, the situation is slightly different. If you are VAT registered then there is potential to claim back the VAT on all the costs, so long as the invoices are in the name of the company. So let's understand this with the help of the example below:

Ricky is a director of XYZ Limited and works from home. He is exploring the idea of converting part of his garden into an extension-as-office. The new office will culminate in some costs for office furniture and decoration. The full cost of the structural work, furnishing, and equipment will amount to £40,000 plus VAT, which the company will pay because it can be said to be wholly and exclusively for business purposes. The VAT on the work and equipment will amount to around £8,000.

Can XYZ Limited recover the VAT charged? Yes, normally the VAT charge on the equipment is recoverable, as this will be owned by the company and is for business use. However, HMRC do not allow reclaim of the VAT on the cost of the building works, so this element would be blocked by the VAT legislation.

However, HMRC's guidance also indicates that where accommodation is used partly for business and partly for private purposes, they may agree to an apportionment using an objective test based on the extent to which the room is used for business use.

Therefore, if Ricky is able to prove to HMRC that he will use the garden conversion entirely for business purposes, then XYZ Limited can recover the VAT on the building work plus the materials.

You can do the same with extensions, garage conversions, even the shed at the bottom of your garden: Providing that there is genuine business use and the furnishings are in line with the proposed use, you should be able to recover all of the VAT for any of the costs.

Tip: In the case of the director of a limited company, it is recommended that the company both contract for and settle any expenditure directly, rather than the director claiming it as an expense or via an adjustment to the director's loan account.

We'd suggest informing HMRC in advance, providing them with all the necessary information to allow them to agree that the building work is only being carried out for business purposes and that there's no private use. Don't forget to include the architect's plans and the list of furnishings you intend to purchase.

If you'd like to know how we can help you with all of this, please feel free to give us a call on 0330 088 6686.

Closing your company via an MVL: Beware anti-avoidance rules

It may happen that you decide to close down your business even if you're still solvent. If the reserves are in excess of £25,000, you will need to use the Member's Voluntary Liquidation (MVL) process to close the company.

To enact an MVL, a business owner or shareholder must appoint a liquidator to shut down the solvent company. The liquidator will make sure that there are no outstanding payments or liabilities before closing down the business and releasing the remaining assets to the company's shareholders.

Since the government brought in new legislation in April 2016 targeting shareholders of "Close Companies", not everyone can consider that the assets of their liquidated company will be taxed as a capital gain. Since the new legislation, if you receive a distribution from a company that closed via an MVL, you'll need to be aware of the **Targeted Anti Avoidance Rule (TAAR)** rules, otherwise all distributions will be taxed as dividends.

TAAR was introduced to ensure that no individual could reduce their tax liability by converting what would otherwise be considered as a dividend into a capital payment by winding up their company.

How does the government discover and come to a conclusion whether someone is guilty of avoiding tax in this way?

The rules apply to distributions made on or after 6th April 2016, when all of the following conditions are met:

Condition A: Immediately before the winding-up, the individual had at least a 5% interest in the company.

Condition B: The business was a "Close Company" either at the date of winding up or at any time within the previous two years.

Condition C: If after the date of the distribution at any time within two years:

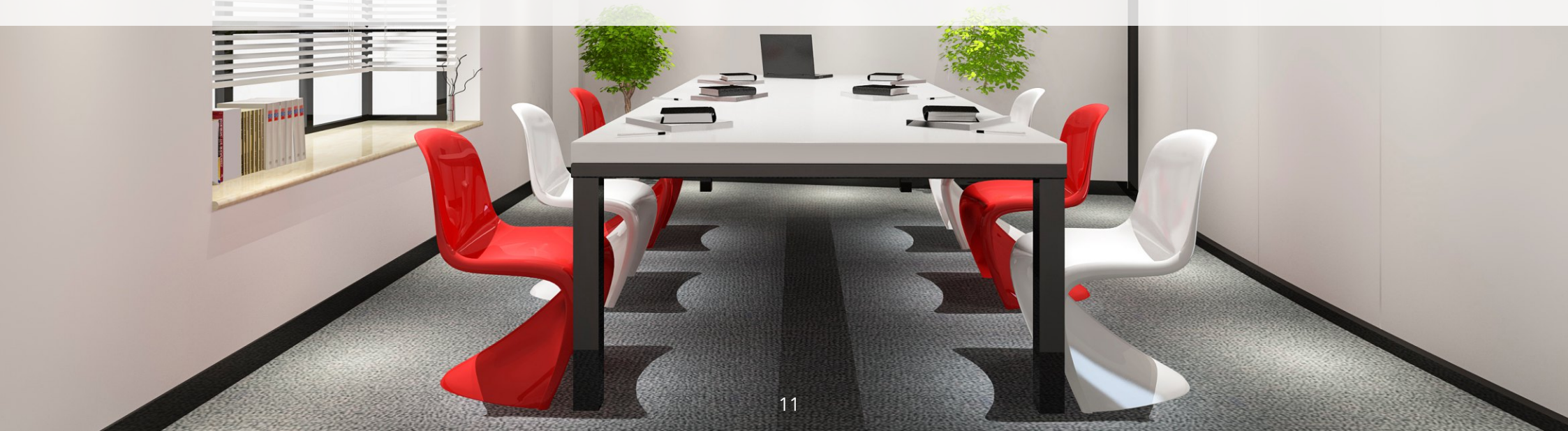
- The individual carries on a trade or activity which is the same as, or similar, to that carried on by the company or a 51% subsidiary of the company;
- The individual is a partner in a partnership that carries on such a trade or activity that is similar to his earlier trade or activity;
- The shareholders with more than a 5% interest carry on such a trade or activity, or are connected with a company that carries on such a trade or activity;
- The individual is carrying on such a trade or activity with the help of a person connected with the individual.

Condition D: It can be assumed reasonably, paying regard to all of the circumstances, that the primary objective or one of the objectives of the winding-up is the avoidance or reduction of a charge to income tax.

Should TAAR apply, the capital payment received, which was taxed at 10% or 20%, would now be subject to dividend tax rates of 32.5% or 38.1%.

Business owners should, therefore, be very careful when considering MVL for purposes other than retirement or with the intention to start a completely different business.

If you would benefit from guidance on whether these rules might affect you, please reach out to our insolvency experts on 03300 886 686.



Pension contributions for umbrella company workers

An umbrella is a company that is used by temporary workers and recruitment agencies to provide a simple pay-as-you-earn (PAYE) structure for assignments.

Apart from other benefits, as an employer, the umbrella company provides its employees (temporary workers) with access to a pension scheme and can contribute to their personal pension pot. The pension could be arranged in the ways set out below, depending on the employee's preference.

Access to a workplace pension scheme (auto-enrolment)

As per government norms, an umbrella company is lawfully bided to provide its employees with access to a workplace pension scheme. The employee is automatically enrolled if the following conditions apply:

- Employee is between the age of 22 and state-pension age;
- Earnings are more than £10,000 for the tax year;
- The employee is classed ordinarily as resident in the UK for work purposes.

The umbrella company will contribute 3% of qualifying earnings and the employee will pay 5% of qualifying earnings into the pension scheme, bringing the overall tax-efficient contributions to 8%.

Note: *Contributions to the umbrella company's pension scheme need to be made from the income you receive from the umbrella company and would need to be taken via PAYE, not made as a lump sum contribution at the year-end.*

Deciding whether to make contributions to a SIPP or your existing pension pot

Some umbrella companies will also be willing to make direct contributions to a pension scheme chosen by you, generally a SIPP. It is important to check the mechanism the company will use to make contributions and whether there is a possibility that they can contribute through a "salary sacrifice" scheme.

As the name suggests, under a salary sacrifice scheme you can give up part of your salary voluntarily and get that paid into your pension pot by your umbrella employer. As the pension contribution is taken off before tax, both the employee and the employer pay less tax and national insurance under this scheme.

One of the main reasons stated by people for not currently saving into a pension scheme is that they haven't found time to arrange it or can't make the time; on the other side of the coin, one of the significant advantages of a workplace pension is that, as an employee of an umbrella company, everything is accomplished for you.

Please note that it is important to consult a Tax Advisor before making any decisions about your pension arrangements. It is important to look at all the factors, including the tax benefits, before coming to any decision.

Choosing the right structure for your rental property business

A "business" is simply a group of people, so a structure can be either on the basis of an individual or a corporation. A window cleaner, for example, is typically a "one-man-band" operation, but as a business owner, he or she might choose to incorporate it for reasons of tax efficiency. For the landlord, there are three kinds of business structure:

- Sole Trader;
- Partnership or Limited Liability Partnership (LLP);
- Limited company.

So let's understand which could work for you either as an individual or as part of corporation.

Sole trader

Most property businesses are sole-trader structures, with the properties being owned by individuals, either alone or jointly with others (such as with a spouse or civil partner).

Each individual is taxed personally on their share of the profit from the property business income, and will pay tax at their marginal rate of income tax of 20% / 40% / 45%. A property-letting business is normally regarded as an investment, and, as such, national insurance contributions are not usually due.

Due to recent changes, tax relief for interest and other finance costs has been restricted and is given as a tax reduction at the rate of 20%, rather than as a deduction from income giving relief at the landlord's marginal rate.

When the residential property is sold, landlords will pay CGT on any chargeable gain at the residential rates, 18% or 28%.

Partnerships

As Business owners often work in partnership with their spouse, family members or a friend, it is important to note that the fact a property is jointly owned is not of itself sufficient to create a property partnership. To create a partnership, the partnership should be registered and the business should have the hallmarks of a partnership.

In terms of tax, this works in much the same way as sole-trading, whereby the partners are taxed individually on their share of profits. The only difference lies in the ownership of debts and liabilities, which each party must own. There are several types of partnerships, but the most commonly used structures are unlimited and limited partnerships. However, in each case, there has to be an agreement between the individuals involved to have set roles and responsibilities.

How the liabilities, revenue and ownership will be split is dependent upon this agreement between partners. Furthermore, it also decides the future course of action in case of the resignation of one or more of the partners.

Limited Liability Partnership (LLP)

The Limited Liability Partnership (LLP) structure is straightforward and clearer, providing the comfort of limited liability along with flexibility as to how the profits are shared. The LLP has to be registered (as a limited company), although generally assets remain in the ownership of individual partners. However, unlike a general partnership, an LLP allows the distribution of profits to members disproportionately as per their ownership share, thereby reducing the profit and helping them to stay below the basic rate of income tax. An LLP is suitable for a family business because, being family members, they are more likely to have a closer affinity with one another and share the general aims of the business.

Tax Tips: The distribution of profits, the return of capital and the introduction and removal of members are all possible without tax repercussions. HMRC also provide tax relief to ensure that CGT and SDLT don't fall due either. You can combine an LLP with a limited company structure to benefit from CGT and SDLT relief, providing some conditions are met.

Limited Company

Running your property business in the form of a limited company means that you pay corporation tax on profits at a flat rate of 19%, instead of income tax at 20%–45%. Also, Section 24 of the finance cost restrictions don't apply to limited companies. Essentially, a limited company structure can help the owner extract income from their business more tax efficiently, in that you can keep your salary at the lower rate for tax purposes and supplement your salary with dividends (you can also choose to receive holiday and sick pay!). Many people have started opting for this structure in the last few years, and there is now a significant market for limited-company lending.

The company will pay corporation tax at 19% on the gains made on the sale of the property, as opposed to the 18% or 28% paid by an individual, but the company cannot benefit from the annual exemption of £12,300 that applies for individuals. Additionally, for UK properties with a value of £500,000 or more, annual tax on enveloped dwellings (ATED) applies, which could prove expensive if the qualifying conditions for exemption are not met.

When setting up a rental-property business, in the planning stages consider all of the different structures, selecting the one that best meets your needs.

Key dates and Deadlines

1st March 2021

- Domestic "reverse charge" VAT will apply for building and construction services. It applies to VAT-registered firms operating under the Construction Industry Scheme (CIS).
- Corporation tax payment due for year-end 31st May 2020 for those companies not liable to pay their liability by instalments.
- Advisory fuel rates – new fuel rates come into force.

7th March 2021

- VAT return – due date for January 2021 VAT returns, unless exempt.

19th March 2021

- Monthly postal PAYE / class 1 NICs / student loan payments are due for February 2021 if you pay by cheque by post.
- CIS return – Construction Industry Scheme monthly return due for the period up to the 5th of the previous month.

21st March 2021

- Intrastat – the due date for payment of supplementary declarations for February 2021.

22nd March 2021

- Monthly electronic PAYE / class 1 NICs / student loan payments and deductions from payments to subcontractors are due up to the 5th of the month if paying electronically.

31st March 2021

- Corporation tax – year-end for corporation tax financial year.
- CT61 – end of CT61 quarterly period.
- Corporation tax return – the filing deadline for corporation tax returns and self-assessment form CT600, for the period ended 31st March 2020; submission to HMRC.
- Company accounts filing deadline – file your company accounts with Companies House for the period ending 30th June 2020.

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