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APRIL 2021 NEWSLETTER

Hardwick & Morris LLP

Introduction

Welcome to the latest edition of the H&M newsletter covering some of the recent changes in tax law and other matters that we believe may be of interest to clients, contacts, and other advisers that we work with. The intention is not to provide a full technical update but to highlight some recent developments, provide some information on changes that may be of interest or relevance to you and to give an insight into some of the things we have been up to.

In this third edition we have a brief summary of the Budget announcements and a more detailed look at the changes announced for corporation tax. We also have what is becoming the traditional update on support during the current Coronavirus pandemic and our hot topic is working from home.

On the more technical side we have an article setting out some of the considerations around holding of copyrights and other intellectual property and some comments on the current interest in Non-Fungible Tokens within the music industry.

Our Brexit article this issue surrounds the effects on touring in Europe. The issue with visas has been the subject of much press speculation but it is not the only issue that needs to be considered. The potential effects on cashflow and budgets of the changes to withholding tax in countries such as Germany should not be ignored.

We hope there is something of interest and do contact us with any comments or further information.

H&M News

The partners are pleased to announce that Alex Holt and Ayla Amiral have been promoted to managers. Both Alex and Ayla trained with H&M and this is a recognition of their hard work and contribution to the firm.

Over the last quarter we have welcomed Chloe Stannage to the firm. Chloe will be part or the admin team and will also be helping Rhianna with the payroll work.

It’s been a busy period of exams with congratulations to Ellie Blackie, Vidas Vaitkevicius, Harrison Grant, Hanro Rossouw & William Rook who were all successful.

The office remains closed due to the current coronavirus restrictions. We are able to receive post and all staff are able to work from home so work carries on and we look forward to a return to face to face meetings soon.

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Budget Summary 2021

This year's Budget was delivered on 3rd March and was heralded as a targeted balance of new tax increases and tax relief to support struggling sectors and stabilise the national debt.

The World Health Organization declared Covid-19 a pandemic on 11th March 2020, the same date as the 2020 Budget. Since then, the pandemic has led to lockdowns, restrictions and an enormous rise in government spending.

Tax thresholds and allowances have been frozen, but key tax increases are delayed to another day.

The key tax points that came out of the Budget include:

- The personal tax threshold will increase to £12,570 from 6th April 2021 but will then be frozen until 2026.
- From 2023 the Corporation Tax Rate will increase to 25%. The current rate of 19% will continue to apply to small businesses with profits of £50k or less. A tapered rate will apply to companies with profits of between £50k and £250k.
- Companies will be able to carry back losses for 3 years, to secure repayment of tax paid in prior years.
- A super-deduction (Capital Allowance) for business investment at 130% of costs, for companies, will apply for 2 years.
- The nil rate band for Inheritance Tax, the Lifetime Limit and Annual Allowances for pension, and VAT registration threshold are all frozen.
- The Coronavirus Job Retention Scheme (furlough scheme) is extended to the end of September, with a 10% contribution from employers for July and August, 20% for September. Employees will continue to receive 80% of salary for unworked hours.
- Self-Employed Support Scheme extended, with grants 4 and 5. The newly self-employed who have submitted 2020 tax return can apply. An 80% grant continues to apply where profits are reduced by 30% or more. A 30% grant will apply where profits are reduced by less than 30%.
- Stamp Duty Land Tax (SDLT): the £500k nil rate band is extended to 30 June. A £250k nil rate band will then apply until 30 September.
- The 5% rate of VAT for tourism and hospitality sectors is extended to 30 June. An interim rate of 12.5% will then apply until April 2022.
- New restart grants of £6k for non-essential retail businesses and £18l for hospitality businesses will be available from April.
- Business rates holiday for the retail, hospitality and tourism sectors is extended to 30 June. A two-thirds discount will then apply for the rest of 2021/2022.
- Investment in HMRC to tackle COVID-19 support fraud and tax avoidance.

Budget Review – Corporation Tax

It is fair to say that many of the headlines from the Chancellor's recent budget were centered around substantial changes to corporation tax. What the chancellor giveth now, with the 'super deduction' and the temporary addition in loss relief options, he will by his own admittance certainly taketh away in a couple of years' time with the headline rate of corporation tax rising to 25%. The UK's first corporation tax increase since 1974.

The questions surrounding whether the changes are fair and if will they work are a debate for another time, but here we can have a look at the changes in a little more detail.

Corporation Tax Rate

As mentioned, the main rate of corporation tax will increase to 25% from 1st April 2023. It should be noted however, that the 25% rate will apply only to companies which have a profit over £250,000.

Small profits relief will mean a rate of 19% will remain for any company with profits under £50k.

Profits between £50k and £250k will benefit from marginal relief resulting in an increased percentage on a sliding scale. The effect of this relief will actually mean an effective rate of tax of 26.5% for profits falling within this band.

There will be no small profits relief for close investment holding companies. This is likely to mean those who have put let property into a company will have to pay the full 25% rate.

The £50,000 and £250,000 limits will be divided between associated companies and for short accounting periods.

Loss relief

During the Covid-19 pandemic many businesses have experienced significant losses. HMRC have announced that additional relief is to be provided to help these loss-making businesses.

There will be an extended three year carry back introduced for up to £2m of losses per company or per group in each of the financial years 2020/21 and 2021/22. Losses must be utilised on a last in first out basis (LIFO).

The £2m limit applies separately to the unused losses of each 12-month period within the duration of the extension.

The £2m cap only applies to the extended carry back, there is no change to the current unlimited carry back of losses in the previous 12-month accounting period.

Groups will need to nominate a company to submit a loss allocation statement in the event any member of the group carries back a loss of more than £200,000 and must be included in a return.

Losses under the de minimis amount of £200,000 may be made outside a return.

HMRC are set to provide more in-depth information shortly.

Group companies

To try and limit the use of group structuring to manipulate profit allocation, the rules for 'group companies' for corporation tax are changing.

Currently, two companies are part of a group for the purposes of corporation tax if they pass the 51% test, i.e. one company owns at least 51% of the other. This will be replaced by the 'associated company' test. Broadly, companies will be associated (and therefore in a corporation tax group) where:

- One company has control over the other.
- Both companies are under the control of the same individual or company.

This adjustment to the group test rules, received significantly less coverage than the other changes to corporation tax but it is a policy change that we think may have significant implications for a number of clients.

Super Deduction

For capital expenditure on plant & machinery between 1st April 2021 and 31st March 2023, assets that would normally have been subject to writing down allowance of 18% via the main pool will instead benefit from a 130% deduction. Giving £25p tax relief for every £1 spent.

Plant & machinery expenditure which normally qualifies for 8% writing down allowance will instead see relief during the same period in the form of a 50% deduction.

There is currently no limit on the amount that can be claimed under the super deduction and the super deduction comes in alongside other capital reliefs such as AIA.

The AIA limit of £1m is also being extended until 31st December 2021.

Where an accounting period straddles the qualifying dates for expenditure, relief will be time apportioned accordingly.

The super deduction is only available for companies, not unincorporated businesses.

Copyright and IHT

“Where should I hold my Intellectual Property (IP)?” has always been a key question for music artists. Several recent high-profile sales of music catalogues have brought the issue back into the forefront of the minds of many artists and their management teams.

How and where an artist holds their IP is not just important when an artist is looking to sell the music they have created, but also for many other reasons. There are several tax and control considerations which this article looks to briefly explore.

<u>Who owns the Copyrights?</u>

Is it the individual? Perhaps it is the individual’s limited company through an assignment from the individual?

Maybe the artist has leased rights to a his/her limited company as part of an employment contract with the copyrights reverting to the individual as soon as the employment contract has ceased. Say for example, on retirement.

There are many reasons why a particular setup may have been chosen previously or may be chosen for an emerging artist.

Understanding who owns the copyright is fundamental when working out the tax implications of a potential sale. If the ownership is not clear, further examination and possibly even legal advice should be considered for clarification.

Asset Sales & the Income Tax / CGT / Corporation Tax implications

A sale of copyright is an asset disposal and therefore subject to more preferential capital gains tax rates, right?

Well, maybe. As many readers will be aware, tax is just never usually that simple. Let us look at some different scenarios:

Sale of copyrights by an individual:

Sale of rights owned by an individual is likely to be treated as earnings and subject to income tax where ethe individual is the writer. There are no guarantees that CGT treatment will be applied which has been alluded to in a number of press articles recently.

Sale of copyrights from the artist’s company:

If an artist disposes of copyright through their company, there is no difference in tax rate whether capital / income. The current rate of 19% will still apply either way.

Once the copyrights are sold, the artist will have the choice to use funds to re-invest in new activities or extract funds from the company (or a bit of both).

Income tax/dividend tax rates will apply as normal when extracting funds from the company.

If the artist plans on retiring or taking an extended break from current activities, then voluntary liquidation of the company is an option which gives the artist a possible route to give capital treatment on the proceeds received after corporation tax.

Business asset disposal relief ‘BADR’ (the successor of entrepreneur’s relief) is possible with liquidation allowing a starting rate of 10% but there are anti-avoidance provisions if the artist engages is similar activity in the following two years. This brings any funds distributed back into dividend tax rates.

BADR may not be that helpful in any case, however, due to size of deals and valuation of rights. BADR is currently capped at £1m and many larger artists may only see limited relief.

Sale of shares of the company:

If you sell shares in a company to a third party, this would be treated as a capital gain and the owner of the shares will be subject to CGT.

BADR is likely to be available, depending on the facts, with the current £1m limit.

Still, a 20% tax rate, in the absence of BADR, is far more appealing than an income tax rate of up to 45%.

A third-party sale of shares would also mean no anti avoidance considerations that may seek to treat the proceeds as a dividend like with a liquidation.

However, whilst a sale of shares looks appealing from the artists' perspective, it may not be appropriate if other assets/liabilities are held in the company that are to be retained. Also, one must question whether it is likely that the buyer would want to buy shares in a company and inherit the compliance history of the company. Many purchases will seek an asset purchase.

Control & Future Earnings

It is not just tax that is important when considering a sale of copyrights. Artists also need to consider the future control they have over their copyrights as well. How will the artist feel about their works being used, for example, to promote a company or used by a political party that they believe do not share the same values?

The artist may also consider how long the proceeds of an outright sale would last, compared against a steady flow of earnings over time. How would they manage or invest the lump sum after tax has been deducted?

Inheritance Tax (IHT) / Business Property Relief (BPR)

If an artist dies unexpectedly whilst still working/performing, then it is highly likely copyrights will be subject to BPR which shields the asset for IHT.

If the artist carries out the business as a sole trader, the rights are owned personally and BPR will be available at 100%.

If the rights are assigned to a company, and therefore owned by the company, then BPR will be on the shares and is likely to be available at 100% (depending on make-up/facts of the rest of the business).

If the rights are licensed to a company and therefore owned by the individual with the rights reverting to the individual on death or termination of an employment contract, BPR will need to be considered in relation to the copyrights themselves. As they are used within a limited company, BPR is likely to be available at only 50% and only provided the shares of the company would qualify for BPR as well.

When an individual artist trades through a limited company there is a clear advantage for BPR when the company holds the ownership of the rights.

LLPs

Limited liability partnerships are often the structure of choice for bands. Allowing band members to stay within the scope of income tax but have the protection of a corporate entity is attractive in many cases.

Another advantage of an LLP is its flexibility to change profit share percentages and to provide for people leaving and joining.

The use of an LLP can, however, result in a number of tax charges. (continues on page 6)

(continued) Firstly, the partnership agreement terms will be key when selling copyrights. It is likely that how the copyrights are owned or to be treated is set out in the agreement and this must be adhered to.

The tax treatment of an LLP follows that of a normal partnership. That is to say the proceeds form the sale of an asset are split between the members of the LLP and each individual member will be required to pay tax on their share of any gain.

For copyrights, this may mean a capital gain with each individual member able to consider the application of BADR on their own circumstances. However, as the copyrights may have arisen as part of the trade of the LLP, the sale may actually be regarded as income in a similar way to a sale by an individual artist.

For inheritance tax the individual members will be regarded as owning a share of the business of the LLP. The application of BPR would then be dependent upon the business of the LLP as a whole and not just the individual assets.

So, for an LLP, the situation is akin to a sole trade for income tax and CGT but more like a company for inheritance tax.

Final thoughts

Whether an artist is considering a sale of their copyrights, is looking at BPR qualification for a life insurance policy or estate planning, or just looking at reviewing their current arrangements it is important that an artist and their advisers understand their current set up and the implications this will have on certain events.

We have seen recent examples of offers being made to the value of rights up to many multiples of annual earnings. Naturally, all artists are different, and cases should be looked at on a case-by-case basis, but the tax implications are significant. It is important to understand and think carefully about how the various taxes will be applied in order to avoid any nasty surprises.

Update on Support for people affected by Coronavirus

1. Extension to the Coronavirus Job Retention Scheme
2. Self-Employment Income Support Scheme – future grants confirmed
3. VAT deferral

Extension to the Coronavirus Job Retention Scheme

The Coronavirus Job Retention Scheme (CJRS) has been extended until the end of September 2021.

The UK Government will continue to pay 80% of employees' usual wages for the hours not worked, up to a cap of £2,500 per month, up to the end of June 2021.

For periods in July, CJRS grants will cover 70% of employees' usual wages for the hours not worked, up to a cap of £2,187.50. In August and September, this will then reduce to 60% of employees' usual wages up to a cap of £1,875.

Employers will need to continue to pay their furloughed employees at least 80% of their usual wages for the hours they do not work during this time, up to a cap of £2,500 per month. This means, for periods between July and September, employers will need to fund the difference between this and the CJRS grants themselves.

Employers can also top up wages above the 80% if they wish, but they are not required to do so.

Employers must also continue to pay the associated Employer National Insurance contributions and pension contributions on subsidised furlough pay from their own funds.

CJRS eligibility from May

For periods from 1 May 2021 onwards, employers will be able to claim for eligible employees who were on employers' PAYE payrolls on 2 March 2021. This means they must have made a PAYE Real Time Information (RTI) submission to HMRC between 20 March 2020 and 2 March 2021, notifying HMRC of earnings for that employee.

Clients do not need to have benefitted from the scheme before to make a claim, so long as they meet the eligibility criteria.

Self-Employment Income Support Scheme – future grants confirmed

The UK Government have announced that the Self-Employment Income Support Scheme (SEISS) will continue until September with a fourth and fifth grant.

Fourth SEISS grant

The UK Government will pay a taxable grant which is calculated based on 80% of three months' average trading profits, paid out in a single payment and capped at £7,500 in total. The value of the grant is based on an average of trading profits for up to four tax years between 2016 to 2020, where available.

The grant will be available to claim from late April. As with previous grants, trading profits must be no more than £50,000 and at least equal to non-trading income in order to claim the fourth SEISS grant.

Eligibility for the fourth SEISS grant will also depend on whether a client has experienced a significant financial impact from coronavirus between February 2021 and April 2021.

As the calculation now takes into account the tax year 2019/20, clients who previously claimed SEISS grants may receive grants that are higher or lower in value than any previous SEISS payments they received.

How clients can claim the fourth SEISS grant

From mid-April, clients will be given their personal claim date by HMRC which confirms the earliest date they can claim. HMRC are inviting taxpayers to claim on different days to ensure the system is fast and easy to use.

The online claims service for the fourth grant will be live from late April. This is to allow HMRC time to process recently submitted 2019-20 Self Assessment tax returns.

Clients must make their claim for the fourth grant between their personal claim date and 31 May 2021 at the latest. Clients will need to make an honest assessment that there has been a significant reduction in trading profits due to reduced demand or their inability to trade, and to keep appropriate records as evidence.

The fourth SEISS grant will be open to some taxpayers who became newly self-employed in 2019/20. To protect the scheme from fraud, HMRC is writing to 100,000 of these taxpayers, asking them to complete onerous pre-verification checks.

Taxpayers will receive a letter between 8 March and mid-April 2021, notifying them that they will receive a phone call from HMRC within 10 working days.

On the call, HMRC will ask the taxpayer to confirm their email address and agree to receive a link to a secure Dropbox. They will then have two days to upload one form of identity and three months' worth of bank statements to demonstrate their business activity, before the link expires.

HMRC has confirmed it will make three attempts to phone, therefore taxpayers who receive the letter should check that HMRC holds the correct telephone number for them. If the number needs to be updated, they must contact 0800 024 1222 (this line is for updating telephone numbers only and will not be able to deal with any other queries).

If HMRC is unsuccessful in reaching the taxpayer, they will write a further letter.

Taxpayers who receive the letter but do not complete the checks will be unable to claim a grant.

- See a copy of the HMRC letter.

Fifth grant

The UK Government has also announced that there will be a fifth and final SEISS grant covering May to September. The amount of the fifth grant will be determined by how much a clients' turnover has been reduced.

The grant will be worth 80% of three months' average trading profits, capped at £7,500, for those with a higher reduction in turnover (30% or more). For those with a lower reduction in turnover, of less than 30%, then the grant will be worth 30% of three months average trading profits.

Clients will be able to claim the fifth grant from late July if they are eligible. Further details will be provided on the fifth grant in due course.

VAT deferral

If a client deferred VAT payments due between 20 March and 30 June 2020 and still have payments to make, they should pay by 31 March if they can.

If they cannot afford to pay by 31 March this year, they can now join the online VAT deferral new payment scheme to spread the payment.

The new scheme lets customers pay their deferred VAT in equal monthly instalments, interest free. They can spread payment across a number of months, depending when they join – the earlier they join, the more months they have to spread the payments across:

- 11 instalments if they join by 19 March
- 10 instalments if they join by 21 April
- 9 instalments if they join by 19 May
- 8 instalments if they join by 21 June.

A client can join the scheme quickly and simply online, without the need to call HMRC.

The online service will close on 21 June 2021 – if a client wants to join the scheme online, they must do so before this date.

If a client is on the VAT Annual Accounting Scheme or the VAT Payment on Account Scheme, they'll be able to join the new payment scheme later in March. HMRC will share more information on this shortly.

If a client has a Time to Pay arrangement already in place for their deferred VAT, they cannot use the online scheme. If they want to amend their Time to Pay arrangement, they should contact HMRC to do this.

H&M's Hot Topic

Home Office – Allowable Deductions

Relief for home office working has been a popular topic recently. This is not surprising given people have been working from home during the past year who have never previously done so.

Below, we have a look at the HMRC guidance for individuals entitled to claim tax reliefs for working from home.

I am self-employed, what can I claim?

Self-employed individuals have two options of how to claim costs of working from home:

<u>Claim actual expenses.</u>

A self-employed individual can deduct a portion of allowable costs when they work from home. For example:

- Heat/Light
- Mortgage interest/Rent
- Council Tax
- Home telephone bills

Costs like these are never going to be incurred wholly and exclusively for the purpose of the individual's business, so an appropriate and reasonable method of apportioning costs must be applied to identify the proportion that relates to the business. Invoices, receipts & payment records should be kept and we would also recommend individuals keep evidence of working from home to back up any claims. Keeping detailed records of hours worked from home is a good example.

Common sense is important and, if an individual wants to make a claim, they should consider whether they would be comfortable backing-up and defending a claim on enquiry. Claims should not be excessive.
Further information can be found at the links below:
https://www.gov.uk/expenses-if-youre-self-employed

https://www.gov.uk/hmrc-internal-manuals/business-income-manual/bim47825

<u>Fixed rate deductions.</u>
This is a much simpler method of calculating 'working from home' deductions. If an individual works a minimum of 25 hours per month from home then they can claim a flat rate deduction of £10, £18 or £26 per month depending on how many hours they work from their home each month.
£26 per month is equal to £312 per year.
https://www.gov.uk/simpler-income-tax-simplified-expenses/working-from-home

£312 is a bit stingy?

Individuals may think that an apportionment of costs will work out better and that may be correct depending on the circumstances. By the time home costs are broken down and apportioned out, however, some individuals will be better off claiming the fixed rate deductions. It is also a much simpler process and far less likely to be challenged by HMRC.

And while it may sound obvious, it is of course important to remember not to claim both!

I am an employee and I have heard through the press recently that employees can now claim tax relief for working from home due to Covid-19, is that right?

Well sort of. The truth is, individuals have been able to claim deductions for a while now, if their employer insists on some homeworking as part of their employment.
The difference for 2020/21 is that HMRC have announced that they will allow an individual a blanket full year allowance, even if they have only had to work from home for one day since 6th April 2020 due to Covid. This may sound generous but, understandably, HMRC have most likely taken the view that having to deal with a whole load of new claims due to Covid is not worth the administrative hassle. Therefore, they are automatically giving all eligible taxpayers affected, a full year's relief.

How much relief am I entitled to?
The allowance is £6 a week, which just so happens to equal £312 for the year. The tax relief will work out as follows:

Basic Rate Taxpayers:	£62.40
Higher Rate Taxpayers:	£124.80
Additional Rate Taxpayers:	£140.40

How do I get the relief?
Employees who file tax returns should make the claim on their 2020/21 tax returns. Relief will be received as a reduction of the final tax liability due for 2020/21.
Employees who do not file a tax return can make their claim directly through HMRC's website (a government gateway ID/password is required). Applications opened from 1st October 2020 and feedback is that it is very easy to do. Link below:
https://www.gov.uk/tax-relief-for-employees/working-at-home
Relief, in this scenario, will be received through an adjustment to the individual's tax code.
An individual can, technically, go back to 23rd March so they can pick up a couple of weeks extra from 2019/20, on top of 2020/21.

My Spouse/Partner/Housemate has made a claim. Can I still make one as well?
Yes. Anyone working from home in 2020/21 is entitled to make a claim. Even if someone in the same house has already made a claim as well.

Excellent, I will make the claim. Is there any news on 2021/22?
For the moment, the indication is that the process will revert to normal in 2021/22 and individuals will need to claim for time that they have actually worked at home as opposed to receiving a blanket full year relief. It will be worth keeping an eye out to see if this changes at any point.

Touring in Europe Post-Brexit

On 19th January Kevin Offer took part in the Reeperbahn Festival Focus Session on Brexit. Along with Dick Molenaar from All Arts Advisers in Rotterdam he discussed the tax consequences of touring post-Brexit followed by a Q&A session on issues that have arisen in the industry. Below Kevin makes some comments arising from the sessions and raises an issue that does not seem to be getting as much publicity but is equally as important going forward.

The problems for bands touring Europe after Brexit has been the subject of press reports, campaigns and Government comment over the past few months. In particular, the issues with visas and work permits is causing concern with comments that the costs of dealing with the added paperwork this, and the need to document all equipment taken on tour, may make touring unfeasible for many artists. The Government have stated, however, that any agreement to exempt certain sectors, such as musicians, from visa requirements is unlikely to be possible. (continued on page 10)

(continued) The visa issue is of great concern but, in practice, some EU countries have their own rules which would, in some cases, dispense with the need for visas. It may therefore be possible to arrange a tour that takes advantage of these exemptions to minimise the impact of visa problems on a tour as a whole. Some reasonable pricing for assistance with obtaining visas would, however, be welcome as it seems that the charges quoted by some are a little high.

There is, however, a separate consequence of leaving the European Union which is summarised below.

The general position for musicians, sportspersons, etc. performing in a particular country is that they can be taxed in that country. This is usually done by way of a withholding tax (WHT). The WHT was historically applied to gross income but this led to some challenges and, eventually to some legal cases brought in the EU on the grounds of discrimination. A non-resident paying tax on gross income was not able to deduct expenses or receive allowances as a resident performer would. This led to a case in Europe which was decided in favour of the taxpayer. As a result, most EU countries subsequently allowed deduction of expenses. Germany was one such country.

In most cases, the ability to deduct expenses was given to all non-residents. In a few cases, however, the change was only made to non-resident performers coming from another EU Member State. Once again, Germany was one of the countries that implemented the change on this basis. As the UK has now left the EU the ability to deduct expenses in Germany is no longer available so any UK musician/sportsperson/etc. who performs in Germany must accept tax on gross income.

The effect of this can be shown in the following example. The example of Germany has been used again with a tax rate of 15% on gross income or 30% on profit has been used. There are many other examples that could be given but this will hopefully help to illustrate the potential problem.

A UK band performs in Germany and receives a fee of £20k against which there are costs of £15k.

Prior to 1st January 2021 there would be the option to deduct the expenses from the income, file a tax return in Germany and pay tax on the profit. The German tax may, therefore, have been £1.5k (£20k - £15k = £5k @ 30%). In the UK, assuming the musician pays tax at the higher rate of 40%, the musician would have a net liability of £0.5k (£20k - £15k = £5k @ 40% = £2k - £1.5k). Total tax is, therefore, £2k.

From 1st January 2021 the position would be German tax of £3k (£20k @ 15%) with net UK tax payable of £0 (£20k - £15k = £5k @ 40% = £2k - £3k). As the German tax in excess of the UK liability cannot be claimed or refunded the band pay a total tax amount of £3k

The overall effect is a loss of tax to the UK Exchequer of £0.5k plus an additional tax charge for the band of £1k.

Possible Solutions

Kevin has two suggestions as to how this issue could be addressed.

1. Agreement could be reached to allow for costs directly linked to the performance to be deducted from the income directly linked to the performance. This would return the position to that which existed up until 31st December 2020 and would also match the way in which the UK applies tax to performers through the work of HMRC's Foreign Entertainers Unit.

2. Agreement could be reached to provide a tax free allowance before income is subject to tax in the country of performance. This would give some relief to the smaller artists and is also done in the UK by the giving of a personal allowance.

Both of the above measures could be addressed through an amendment to the Double Tax Treaties that the UK has entered into. There is a separate clause in almost all treaties that applies to entertainers, sportspersons, etc. (usually following Article 17 of the OECD Model Treaty). With regard to the allowance, the USA includes an amount of $20,000 in most of its treaties, including the one with Germany. It would not, therefore, be something that countries such as Germany have not agreed with other countries.

Not all artists will lose out as the larger tours would probably have been accepting WHT on gross income anyway. However, this is an issue that will need to be considered when budgeting for a tour.

Kevin has already approached one MP to raise this issue and see if there is any appetite to push for a change. This would, however, need some support from the music industry so, if you have any views, comments or questions, then we would be pleased to hear from you.

Some thoughts on NFT's in the Music Industry

There has been a lot of publicity surrounding the use of Non-Fungible Tokens (NFT's) and how they are the future of the music industry. We have already seen multi-million pound transactions involving the sale of artwork, songs and offering perks such as tickets or merchandise.

So, just what are NFT's and what are the things that need to be considered before jumping in? Below Kevin Offer sets out some of his thoughts on a rapidly developing area and the potential tax issues that may arise.

What are NFT's?
NFT's are "virtual collectibles" that operate on a blockchain like a cryptocurrency. However, instead of representing money, they hold assets such as artwork, music, tickets, etc. It can be thought of as a limited edition vinyl album that has been signed by the band. There may be a number of copies created but each one is unique and cannot, itself, be copied. This was previously impossible I the digital world but can now be done. Whoever owns the NFT may trade it on so it can be a bit like owning stock. However, where the NFT provides access to gigs or other rewards then it may be a ticket or give a right to receive goods.

Herein lies the first issue in that one NFT may be unlike another so one set of rules may not apply. What we may have, from a legal and tax point of view, is a bundle of rights attached to the NFT rather like the situation with image rights. How the various rights may be taxed is likely to cause much head scratching present.

What is being sold?
There have been a number of big value transactions in recent weeks and new ones are announced on almost a daily basis. These have consisted of anything from short music videos to new albums or special fan perks such as front row tickets to future concerts and items of merchandise. Those purchasing the NFT's can own them and receive the perks themselves or sell them on I the future. The key thing is that the NFT is unique. The word "fungible2 means transferable so a non-fungible item is, basically, an exclusive item.

What are the legal issues?
That's something for a lawyer to get their head around. However, where a piece of music is being sold as part of a digital product, then how the rights of the songwriters/producers/session musicians/etc. would be applied could be a minefield.

There is an anonymous case involving one songwriter preparing legal action at present against the sellers of NFT's for in excess of $10m where part of the package was a song they had co-written. Neither the songwriter nor the music publisher were aware of the sale until a cash offer was made of a percentage of the sale. The contract attached to the offer included a waiver of any future claim on the NFT or a share of onward sales.

This case, if it goes to court, will be an interesting one to follow. In the meantime, perhaps future contracts will need to include clauses covering use within NFT's?

What are the tax issues?
HMRC in the UK have recently published their long-awaited guidance on the taxation of cryptocurrencies but that doesn't really cover the complexities of NFT's. In simple terms, HMRC's view is that cryptocurrencies are assets so subject to capital gains tax unless the owner is a business or trading (or, to use the correct term, "mining") in cryptocurrencies. In the latter case, the proceeds will be treated as income.

With an NFT there would appear to be a number of possible alternative treatments based on the bundle of rights that form the overall package.

- Where the asset held within the NFT includes music then is the payment a form of royalty?

- One of the packages connected with the recent Kings of Leon NFT sale is a right to front row seats and tour merchandise. Would a tax authority take the view that the payment for the NFT is, potentially, connected with a performance and, therefore, is subject to tax in the country of performance? Experience suggests that a contract requiring an advance to be paid to an overseas party for merchandise related to future touring could be viewed in the UK as a payment subject to withholding tax. Would this view still be held and would other countries have similar views? What then happens when the NFT is sold on in the future? Further withholding tax?

- Indirect tax may also be an issue. Does the NFT represent a digital service (a video), a future physical service (tickets) or a future supply of goods (merchandise)? The VAT position will not be the same.

- Add in the international trading of NFT's and the above issues will just multiply.

Anything else to be worried about?
One of the main concerns that gets glossed over with all digital products is the effects on the environment. Processing data leaves a huge carbon footprint as has been demonstrated with the recent concerns over mining bitcoin which consumes more energy than some entire countries. It is even suggested China may not meet its climate change targets due to bitcoin. It remains to be seen how much effect the growth of NFT's will have but it is clear that large amounts of energy will be required to store, process and manage the data. Some artists may question whether NFT's are worth the environmental cost.

Conclusions
The use of NFT's is a rapidly growing area and, like all developments in the past, the legal and tax systems will have difficulty applying current laws to something they were not intended to cover. However, NFT's appear to be here for a while and it's time for the discussion on some of the issue raised above. If you have any comments on NFT's then please let us know. We may not have all the answers but would welcome any exchange of thoughts on developments.

HARDWICK & MORRIS

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