



# newsletter

As the "Credit Crunch"/Recession leads towards a second year, businesses in general continue to suffer the consequences, with some sectors, for example retailing, feeling the after effects worse than ever.

Over the last 18 to 21 months we have been assisting clients to negotiate the effects and help them through these difficult times. Our experience is that many businesses require to address key areas including:

- Taking steps to encourage sales
- Controlling direct costs and overheads
- Monitoring and controlling margins
- Down-sizing/reducing scale to align with market conditions
- Managing working capital-debtors/stocks etc.
- Obtaining necessary finance and support for next 1 to 2 years
- Managing cash flow

Some or most of these will be relevant to your business, and you will probably be taking some of the necessary steps already, if not, then your business survival and remaining profitable and successful, will be threatened.

At William Duncan & Co your assignment partner is here to help. Please feel free to discuss with him/her your concerns and decide how our assistance can be best applied to advise you.

## WINTER 2009

### Take care in planning to avoid the 50% rate

It is now well known that an additional rate of tax of 50% is to be introduced from 6 April 2010 for individuals whose taxable income exceeds £150,000. Individuals affected by this will no doubt be looking for ways to reduce their tax liability.

One route which will certainly be examined will be to try to establish that a transaction falls within the capital gains tax (CGT) rules and is therefore taxable at only 18%. The gap of 32% is a very tempting one to consider but be aware that HMRC have a strong incentive to move the other way and may seek to turn 18% into 50%.

Where share transactions take place, there is some complex anti-avoidance legislation that can turn a capital gain into an income tax charge which has been in place for many years. This can apply where HMRC can show that the arrangements were not done for commercial reasons and were done for the purpose of avoiding tax. For example, a higher rate tax individual who owns two companies A and B sells some of the shares in company A to company B for cash. This may trigger the rules because all that is effectively happening is that cash is being extracted from company B's distributable profits to the shareholder and so what appears to be a capital gains tax transaction is, in substance, a dividend.

Land transactions can also be an area of contention. Suppose instead of buying land in their own name an individual uses a company to buy the land and develop the site. Then instead of selling the development in the company, they sell the shares in the company (the purchaser may also find this attractive for stamp duty land tax purposes). They think they have made a capital gain on the shares but HMRC have legislation which they can use to

argue that this should be treated as an income tax liability because if the land had been sold, there would have been a revenue profit.

Where a land transaction is carried out directly by an individual, that individual may want to argue that it is a capital transaction. However, the definition of a trade for income tax purposes includes what is known as 'an adventure in the nature of trade' and there is a substantial body of case law which has established the characteristics of such an adventure which may lead to an income tax charge.

If you are planning significant one-off transactions you need to take advice before you start to ensure that these potential problem areas can be avoided, so do contact us.



# 50%

# False self-employment in construction

The government has concluded that the best way to address the issue of false self-employment in the construction industry for income tax (IT) and national insurance (NI) purposes is to introduce legislation which deems workers within the construction industry to be in receipt of employment income unless one of three simple, clear and easy to apply criteria is met.

HMRC state:

'Where both the worker and the engager decide that self-employed status is the desired outcome, then it is very challenging for HMRC to build a full and accurate picture of the true terms of the engagement. As a result, demonstrating any mismatch between the contract and the reality can be difficult and time-consuming. Or, if there is no written contract in place, establishing the actual terms of the engagement can also be problematic.'

The government believes that the following three criteria are reliable indicators, within the context of the construction industry, of a worker being in receipt of self-employment income:

- Provision of plant and equipment - that a person provides the plant and equipment required for the job they have been engaged to carry out. This will exclude the tools of the trade which it is normal and traditional in the industry for individuals to provide for themselves to do their job;
- Provision of all materials - that a person provides all materials required to complete a job; or

- Provision of other workers - that a person provides other workers to carry out operations under the contract and is responsible for paying them.

A worker will have to meet one or more of these three criteria in order not to be deemed to be in receipt of employment income.

If the worker is deemed to be in receipt of employment income, PAYE will be due on the payment he receives. The person who makes the payment to the worker will have the obligation to apply the statutory criteria.

However, it is intended that the introduction of the test should not have an adverse impact on those genuinely carrying on a business and the test has been formulated to achieve this. The government recognises that a flexible labour supply is important to the industry and that self-employed workers who are carrying on a business make an important contribution to this.

This measure will only deem a worker to be in receipt of employment income for the purposes of income tax and NI and will not confer employment law rights on a worker. However, the government hopes that the tax changes will also engender a more appropriate treatment of workers throughout the industry, leading to a culture of responsible employers applying employment rights and providing training opportunities.

Where the person in receipt of the worker's services and the payer are the same, or the payer is an employment agency, PAYE and NI will be due on the full amount of the payment. Where the payer is an intermediary, the definition of payment in the Managed Service Company legislation may be adopted.

These are proposals at the moment and we will keep you informed of developments but in the meantime please contact us if you need further information.



## Giving you EXTRA.... But the offers are limited

### Vehicle scrappage allowance

The original scheme which pledged £300 million has recently received a welcome boost of a further £100 million funding. In announcing the decision Business Secretary Lord Mandelson said:

'The automotive sector has been strongly affected by the recession, but the scrappage scheme has delivered a boost to manufacturers and the supply chain. We have listened to the concerns of manufacturers and are increasing the funding of the scheme to £400 million.

'But we must make sure that the help we do offer is targeted, limited and proportionate. This is not a blank cheque to the auto manufacturers but recognition there is still a short term challenge to boost demand and confidence in the sector.'

Alongside the increased funding, the government scheme which offers a £2,000 discount on a

new vehicle purchase, funded partly from the government and partly by motor manufacturers is to be extended so that van owners with vehicles over 8 years old (so registered on or after 28 February 2002) rather than the current 10 year requirement can benefit.

Car owners will also get a boost, with the age qualification changed by 6 months to extend the benefits to cars registered on or before 29 February 2000 (V registration).

The scheme is still to end on 28 February 2010 or earlier if the funding runs out so act now.

### Temporary first year allowance

Many businesses already obtain 100% relief on plant and machinery expenditure but there are situations when the Annual Investment Allowance of £50,000 per annum either has to be shared with another business or is simply insufficient for

bigger plant intensive operations. In recognition of this and to encourage investment in the current economic climate, an extra capital allowance is available on a temporary basis.

The additional capital allowance is only available for expenditure incurred on plant and machinery for a qualifying activity in the 12 month period commencing 1 April 2009 for companies and 6 April 2009 for individuals and partnerships.

The temporary allowance takes the form of a first year allowance (FYA) of 40% instead of the normal 20% annual allowance. The FYA will not apply for expenditure on integral features, cars, long life assets and assets for leasing. However it is available to all sizes and structures of business so take advantage before it disappears.



## What do you know about Liechtenstein?

Liechtenstein is located between Switzerland and Austria. The Liechtensteiners are descended from the Alemanni tribe and its currency is the Swiss franc. The principality of Liechtenstein was founded in 1719 and remained part of the Holy Roman Empire.

More importantly, Liechtenstein had become a 'tax haven' for those who wished to hide from tax authorities due to Liechtenstein's stringent banking secrecy laws.

HMRC have been gathering information from many banks over recent times in an attempt to track down undeclared monies. Now, Liechtenstein and the UK have signed a deal which concerns the introduction, by Liechtenstein, of a five-year taxpayer assistance and compliance program. It also concerns the introduction, by HMRC, of a five-year special disclosure facility for persons wishing to regularise their UK tax affairs.

The deal is designed to provide an incentive for persons with assets and interests in Liechtenstein to disclose previously undeclared income and gains to HMRC. This will be done by limiting the recovery of UK taxes to a defined 10-year period and providing an option for a simplified composite rate of tax in certain circumstances. Normally, HMRC would be able to consider tax, interest and penalties for up to 20 years.

The main part of the deal is that UK investors will be urged to come clean to HMRC about their tax affairs. If they do, they will be given the 'favourable' terms detailed above. If they don't, then Liechtenstein will close their accounts, although Liechtenstein will not be handing over bank details to HMRC.

HMRC consider that approximately 5,000 British investors own bank accounts in Liechtenstein and estimates of the funds on which there could be unpaid tax, could be up to £3bn, so it will be interesting to see how successful this deal is for HMRC.

## APR goes on its travels!

Agricultural Property Relief (APR) is a key inheritance tax (IHT) relief that can reduce the value of agricultural property in an individual's estate for IHT purposes to nil. It is especially valuable when agricultural property is not comprised within a business and so is not eligible for Business Property Relief as an alternative.

Until now, one of the key conditions to obtaining the relief has been that the agricultural property was located in the United Kingdom, the Channel Islands or the Isle of Man. This is now extended to include qualifying property anywhere in the European Economic Area (EEA). This comprises all the EU countries plus Norway, Iceland and Liechtenstein.

Going forward this means that an individual owning agricultural land in, for example, France could now qualify for APR on the value of that land in their estate at death or pick up the relief if they were to transfer the land into a trust in their lifetime and possibly avoid or mitigate their IHT liability accordingly.

The relief also applies retrospectively because the UK government has been forced to remove the discrimination which existed in favour of UK land. This means that there may now be an opportunity to make a claim for repayment of tax.

If IHT was paid on property in the EEA after 23 April 2003 and the property would have met the conditions to qualify for APR then the tax paid can be recovered by making a claim to HMRC. Normally a tax repayment has to be made within six years which would now be impossible for tax paid early in 2003. HMRC are required to allow claims to be made by 21 April 2010 where they would otherwise be out of time.

### Lifetime gifts

It is not just IHT which might be repayable. The gift of land and property from one individual to another during lifetime is usually chargeable to capital gains tax (CGT) unless gift relief is available. In most cases this is only available on trading assets but where a gift of land or property qualifies for APR, the gain can be deferred for CGT purposes. If for example an individual had gifted agricultural land in Eire to their children in 2005, the individual may have paid CGT on the gain. A gain is essentially the difference between the market value of the land at the date of the gift and any allowable capital expenditure. A claim could now be made to defer the gain until the children dispose of the land and that would give the parent a repayment of CGT now.

Please contact us to review your family's IHT and CGT position if you consider this may be beneficial to you.

## A time for giving

So you want to give your employees a reward for their hard work this past, possibly difficult, year. Perhaps you were thinking of a party or a gift to say thank you - but are there any tax implications for them and is it all tax deductible for the business?

### The staff party

This is not classed as business entertainment as long as it is exclusively for employees and their partners. This means from the business perspective the costs are deductible for income tax (IT) or corporation tax (CT) and any VAT element is recoverable.

Be careful of situations where the business incurs costs for a mixed event for the benefit of staff and customers or suppliers, as the entertaining portion may be disallowed for IT and CT and part of the VAT may be non recoverable. In cases where clear records cannot distinguish between staff and others there is a risk of the whole amount being disallowed!

For the staff there is no taxable benefit of being provided with parties or events over the course of a tax year, provided that the overall cost to the employer does not exceed £150 (VAT inclusive) per attendee, in the tax year. Where there is an event which trips over this limit then a taxable benefit does arise.

### A thank you gift

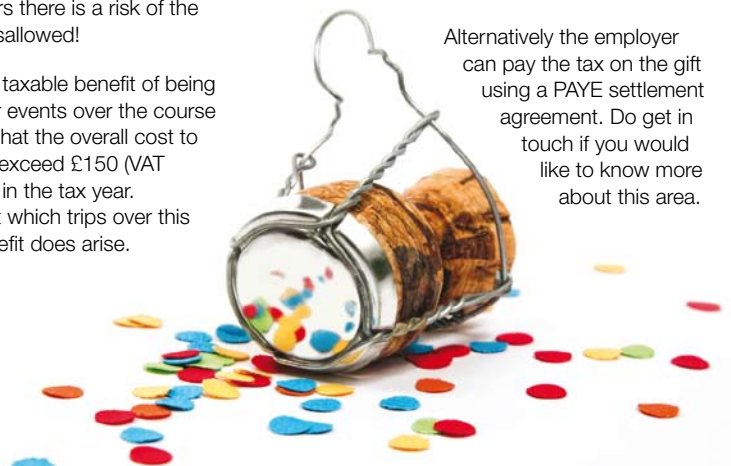
Gifts to staff are also normally a fully

deductible cost for the business and VAT is recoverable. It is non-staff gifts which are usually restricted in form and amount to retain tax deductions.

HMRC generally allow an employer to give minor gifts to their employees without having to report this as a perk of the employee's job through the benefits system; for example, some flowers when an employee gets married. This may even apply where all employees receive a gift (for example chocolate), provided it is trivial and not something which can be turned into or used as money. In circumstances where an employer does need to report gifts, which are not trivial, a form P11D is used.

Using form P11D will mean that the employees will end up paying tax on the value of the gift. This may not be the best way of dealing with this issue as the tax charge may leave a nasty taste (unlike the chocolate!)

Alternatively the employer can pay the tax on the gift using a PAYE settlement agreement. Do get in touch if you would like to know more about this area.



# Are you ready for the rate change?

1 January 2010 sees the reintroduction of the standard rate of VAT at 17.5%. For sales of standard-rated goods or services that take place on or after 1 January 2010 businesses should charge VAT at the new rate of 17.5%. This means that businesses currently calculating their VAT using the VAT inclusive fraction of 3/23 should use the new fraction of 7/47.

## Special rules for sales of goods that span the change in rate

However, there are optional change of rate rules that you may be interested in applying. You can apply the rules selectively to different customers.

So, for example, if you issue a VAT invoice after 1 January 2010, for goods you provided, or services that you completed before 1 January 2010, you can, if you wish, apply the 15% rate.

You can decide to apply these rules even after you have issued a VAT invoice showing 17.5% VAT. If you do, you must issue a special credit note giving credit for the extra 2.5% VAT, within 45 days of the rate change (i.e. by 14 February 2010). You should not cancel the original invoice.

## Example

One computer is delivered to a VAT registered business customer and one to a non business customer on 22 December 2009 when the VAT rate is 15%. The business customer is fully taxable. On 2 January 2010 the VAT invoices in respect of the two sales will be issued. What rate of VAT applies?

Under the normal taxpoint rules, 17.5% VAT is due as the invoice was issued after the increase in the rate and within 14 days of the supply of the computer. However, under the special rules you may decide to charge the 15% standard rate of VAT which was in effect when the computer was delivered. This will reduce the amount of VAT you are liable to account for on the sale.

Your VAT registered customer is able to recover the VAT charged in full so the use of the special rules will not save them any tax. In this situation it may be easier just to charge the full 17.5%. However for the non business consumer they will probably be expecting to only be charged 15% VAT so you have the facility to apply only 15% and keep them happy.

## Supplies of services that are in progress on 1 January 2010

It will also happen that a service commences before 1 January 2010 and is still in progress after that date. The normal rule is that where an invoice is issued or a payment received after 1 January 2010 VAT is due at 17.5% even if part of the supply was undertaken before that date. However, special rules also apply here both in relation to continuous supplies of services (such as leasing of equipment) and to single supplies of services (such as a lawyer preparing a will), carried out over a period of time. Please contact us for more information if this affects you.

## Payments in advance of 1 January 2010

Where payment is received before 1 January 2010 for goods and services also supplied before that date then the old 15% charge clearly applies. However where goods or services are not supplied until on or after that date then special anti avoidance rules may apply to prevent artificial VAT savings and obtaining advice is recommended.



# Painful extractions

Over recent years, HMRC have become increasingly interested in the company law elements of dividends. This is mainly due to the fact that running a business through a company and taking the profit as dividends can create substantial savings. Even with the proposed changes to the tax system from next year, including the 50% additional income tax rate and a corporation tax rate of 22% for small companies, there are still savings to be made.

However, if HMRC can show that the dividends are unlawful from a company law perspective at the time of payment, then they could argue that the money extracted was not a dividend but a loan. Some companies are clearly at risk where currently they are not creating the same level of profits as in recent years and yet continue to extract regular dividends.

For many owner managers, this would leave the company with a corporation tax bill of 25% of the amount taken as well as a taxable benefit for the individual for the use of the monies and Class 1A NIC for the employer.

In a recent case, the taxpayers entered into a particular corporate structure which, if it worked, mitigated the corporation tax bill greatly. HMRC said that this structure did not work. However, the companies involved did not have enough money to pay this additional corporation tax, that HMRC thought was due.

HMRC then looked back in time and saw that the owners had extracted a lot of the profit over the years as dividends. So HMRC attempted to use company law to make the owners repay the dividends, as they had been paid unlawfully... which would then have left the companies involved with money to pay the corporation tax.

HMRC won the first two rounds of this case and although they have now lost the latest round, it just goes to show how important it is for companies to ensure they have enough reserves at the time dividends are paid.

HMRC are clearly interested in this area, so if you have any concerns, please do not hesitate to get in touch.