2007

AUTUMN NEWS

Borrowed clothes?

The new Chancellor, Alastair Darling, delivered his first Pre-Budget Report on 9 October, outlining some of the main tax changes we can expect next March. There was an immediate fuss over changes to inheritance tax, foreign domiciled people and air passenger duty that seemed largely to adopt proposals made by the Conservative Shadow Chancellor, George Osborne, the previous week. Imitation may be sincere flattery, but it must be frustrating when you have come up with what seems to be a popular idea and the other side immediately claim it for themselves.

What was even more surprising was the major change to capital gains tax which will take place on 6 April 2008. CGT was apparently dear to Gordon Brown – he rewrote the rules in his first Budget and has tinkered with them several times since. It seemed unlikely that Mr Darling would scrap the whole structure that his predecessor had built up… but that is what he has done. Mr Brown does not appear to have taken this as a criticism – maybe he has forgotten that the rules were his creation.

The changes are very significant. As always, there will be winners and losers: some people will want to bring forward sales before the change, others will need to delay them until afterwards. It will be an "interesting time" for capital gains. We will be here to help you see what the new rules mean for your money. There was one more surprise in the CGT changes – the proposals actually look simpler than the current system. That's a major departure from the way Mr Brown worked, and a welcome one! ●

You want it when?

It has now been confirmed that income tax returns will be required earlier next year – if they are sent in paper form. The new deadline for 2007/08 forms is 31 October 2008, three months in advance of the current 31 January date. 31 January remains the due date for returns filed online, and also for paying the tax.

As a small carrot to go with this stick, HMRC will change the rules on when they can open an enquiry into a return. At the moment, this is 12 months from the last filing date, whether you put the return in early or not. So if you are very quick, you get no advantage – the taxman can look at your return for more time before deciding whether to ask you questions. Next year, the taxman's clock will start running the day they get the return. You will still have 12 months from the 31 January filing date to make amendments to a return, but if you do make an amendment it gives the Inspector longer to ask questions.

One thing doesn't change: if we are responsible for filing your tax return, we need time to do a proper job before we send it in – "two days before the Revenue deadline" is not enough, particularly if all our clients choose to send their information to us at the same moment. We will let you know in good time what we need and when we need it, and we trust that you will help us to help you. ●

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Up with the Joneses

Mr and Mrs Jones set up a company, Arctic Systems, to sell Mr Jones' services as a computer consultant. Mrs Jones was company secretary, but her husband did all the fee-earning. Because he took a small salary, the company made profits which were paid out as dividends. That's a common arrangement – paying dividends saves National Insurance contributions, and splitting the income between husband and wife saves income tax. Since independent taxation of couples was introduced in 1990, most tax professionals thought this was within what the law allowed.

Then the Revenue went after the Joneses under the "settlements" rules. The idea was that Mr Jones had made a generous gift to his wife – he wouldn't have let anyone else to have the shares on the same terms – and so the dividends could be taxed on him rather than her. The tax involved was only £6,000, and the Revenue refused to accept that it was an important "test case", but the House of Lords had to determine the issue.

The result: a resounding win for the taxpayers. The arrangement was a "settlement", but a gift of ordinary shares was protected by the law. That's a great relief for the Joneses, and for many others who have a similar business set-up.

Unfortunately, the Revenue say they do not think the result is "fair". We can expect something on this in the next Budget – we can only hope the Revenue don't create a legal sledgehammer that will make life harder for small businesses. We'll keep you abreast of developments – and if you want to discuss how to structure your business, we'll be happy to help. ●

Bills bills bills

A VAT-registered business is required to issue a tax invoice when it supplies something to another business. A "proper" tax invoice has to show a long list of details that are specified in the law. There are penalties for issuing invoices which don't comply, and customers can have problems if they try to claim back VAT from HMRC on an invoice which isn't up to scratch.

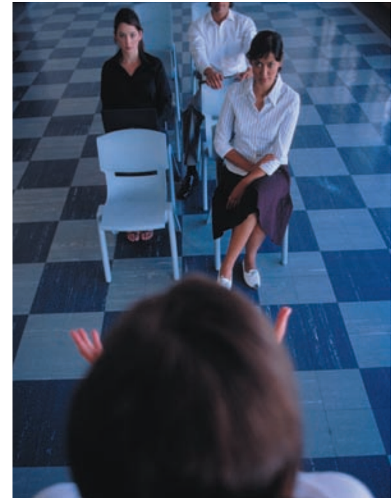
The rules changed slightly this summer – for example, you are now required to number your invoices in sequence so it's easier to see that they have all been recorded. If you want to check that your paperwork is in order, we will be happy to advise you. ●

Education, education

Tony Blair (remember him…?) was very keen on education when he was running for office. The Inland Revenue can be less sympathetic when taxpayers try to claim a tax deduction for the costs of training. There have been quite a few tax cases about this, and the taxman usually wins – so, to avoid disappointment, it's worth knowing what the rules are.

An employer can pay for employees to be trained with no bad tax consequences, as long as it's relevant to the job – or retraining a redundant employee for a new job. It's a valid expense for the employer, and not taxable for the worker. You can't dress up a "jolly" as a training course – teaching your sales executives to drive racing cars will probably be taxable as a benefit in kind.

The problem arises when someone decides to pay for their own training. It's hard to get a deduction under the rules for employees: you have to show that the expense was "necessarily" incurred "in the performance of your duties". Usually the taxman will argue that you aren't performing the duties – you are preparing to do so – and if it was necessary, your employer would pay. So it would be more tax efficient to agree that the employer should pay, maybe taking the cost into account the next time salaries are discussed.



A self-employed person is supposed not to claim an expense for training if it involves the acquisition of new skills which did not exist before, and creates a lasting benefit for the trade. This is a Catch-22 problem – why else would you go on a course? If it's just to update your existing skills that should be all right, but if it's something altogether new, they may object.

If you would like to check up on the tax treatment of your training costs, we'll be happy to answer your questions. ●

Done to a crisp

The famous saying goes, "If it looks like a duck, and walks like a duck, and quacks like a duck – chances are it's a duck". What has that to do with tax? Well, back in 1972 the government decided that we should pay VAT on snacks, and at that time there was a relatively limited range of snacks. So the law says that VAT is charged on "potato crisps, potato sticks, potato puffs, and similar products made from the potato, or from potato flour, or from potato starch". Tortilla chips aren't VATable because they may look like a crisp but they are made of something else.

Recently the company that makes Pringles tried to persuade the VAT Tribunal that Pringles are not like crisps and they aren't "made from the potato" – they had to disclose the recipe, which is only about 42% spud. They argued that "made from potato" meant "made from not much else" – they would have to be mostly potato to be taxable.

The chairman – perhaps after eating too many Pringles – decided that they were quite like crisps, and the largest single ingredient was potato. Don't expect a 17.5% price cut any time soon! ●

Tax association

If you are a small company, you pay tax at a lower rate – currently 20% rather than 30% – on the first £300,000 of profits. If you have "associated companies", that limit is divided up – so if you are one of a group of 10, each of them will only enjoy the lower rate on £30,000.

The problem is that it's not always obvious when this applies. Two companies are associated if they are under "common control", even if the controller isn't a company. Close family relations can be added together in determining control, and so can business partners. So if Smith and Jones are in partnership together, Smith's company and Jones' company might each pay more corporation tax – even if they had nothing else to do with each other.

Sometimes it's not obvious that this rule applies. Suppose Smith owns 60% of company X: it does not occur to the directors of that company that their corporation tax is affected by the other companies controlled by Smith's wife and Smith's business partners. It's only later, when the Inspector asks questions, that the problem becomes apparent. If they knew at the time, they might be able to do something about it – but later may be too late.

If you have other companies, or partners or relatives with other companies, please let us know so we can think about the rules. They may not apply, but it's better to be safe than sorry. ●

Expense claims

When employees put in their expense claims, the first person to scrutinise them is the boss. It's a business decision to pay or not to pay, to believe or not to believe. If your best sales agent might be a little imaginative, who cares? More money is coming in than going out.

Of course, it doesn't stop with the boss. The taxman is also interested. If you pay something as "expenses" when it can't be justified, there should be tax and NIC. So you have to be hard-hearted – and reward the staff with something that everyone acknowledges is salary or bonus, not expenses.

Making sure everything is backed up with documents has another benefit. If employees back up petrol or mileage claims with VAT invoices, and get hotels to put the business' name on their bills, the employer can claim back the VAT on these types of expense. If you pay 40p a mile to an employee who drives a mid-range car, 13p of that is treated as for petrol – so on a mileage allowance of £100, you can claim back £4.84.

If you would like to discuss how to maximise the VAT recovery on employee expenses, we will be happy to talk to you. ●

Cash down

If you take money in advance of selling something, that triggers the "tax point" for VAT – you have to pay the VAT element to HMRC. No matter, at least your customer has already paid you. But what happens if the sale then falls through?

In many businesses, of course, you issue a credit note and return the money. If that's a genuine cancellation of the supply, you reverse the entry in the VAT account and you get the tax back from HMRC. No problem.

In some businesses, such as the hotel trade, it's common for all or part of the advance payment to be forfeited by the customer on a cancellation. What then? HMRC's VAT guide tells you that a forfeited deposit isn't a payment for any supply – after all, the supply never took place – so you reverse the VAT entries and get the tax back anyway, even if you have the cash. It's unusual to be able to keep the whole of a receipt without giving any to the taxman, but that's the rule.

The problem is that it's different if the customer actually paid for the hotel room and just chose not to sleep in it. Then VAT is due. Sometimes it's obvious that what was paid was a deposit – say £50 for a £120 room, which could be sold again on cancellation. Sometimes it's obvious that a supply was made – £120 paid in advance for a guaranteed reservation. Sometimes it might be in the grey area in between.

A recent European Court case confirmed that this is the correct treatment of deposits. Some lawyers had argued that "making the reservation" was a taxable service in its own right, and the payment of the deposit was for that – but the judges disagreed. It's nice to know we have been doing it right all these years.

If you take deposits which customers sometimes forfeit, and you aren't sure what the correct VAT treatment should be, we'll be happy to advise you. ●

Plant buying

This year's Budget announced that the rules for capital allowances – tax relief for plant and equipment – will change significantly for small and medium-sized businesses from 1 April 2008. At the moment, a small business gets a 50% deduction for expenditure on most equipment in year 1, then 25% tax depreciation on what's left in later years. Cars only get the depreciation, not the first year allowance, and the maximum is £3,000 a year.

The new rules aren't final yet, but two main changes seem very likely. First year allowances will go, replaced by an "investment allowance". That's effectively a 100% deduction for expenditure of up to £50,000 on plant in a year. Anything over that will get depreciation, but the rate of writing down will drop to 20%. Expenditure on cars still won't qualify for the investment allowance.

So… if you plan to buy some plant around the end of March, the sums could be quite complicated – particularly if 31 March is also your year-end. There won't be a hard and fast rule for whether it's better to buy before or after the rule change – it will depend on the numbers. We will be happy to crunch them for you! ●

Hobson's choice

If you resign voluntarily, you give up many rights under employment law. If you are sacked, you can look for damages for breach of contract or compensation for unfair dismissal, if the employer hasn't followed the right procedure.

Some employers will try to make an employee resign – they can make life difficult, put on pressure, give them a "non-job". These things are generally regarded by the courts as "constructive dismissal". Even if the employee ends up resigning because the situation has become unbearable, they will be treated as dismissed and will be entitled to the protection of the law.

In a recent case an employee was called to a meeting and told he would be dismissed. A negotiation followed and terms for a notice period were agreed. A document was drawn up apparently terminating the employment by mutual agreement: he had resigned.

The Employment Appeals Tribunal agreed with him that this was still a dismissal. The negotiation was not free and equal – the meeting had started with the fact of his dismissal, and he had tried to salvage the best he could. The "mutual agreement" did not take away his right to employee protection. ●

A helping hand

National newspapers earlier this year reported that the Revenue were planning a crackdown on buy-to-let landlords. The Revenue have tried to offer reassurance that this is not the case. It was all a misunderstanding: they had announced that they were planning to offer additional help to landlords of all types (not just buy-to-let) to understand and comply with their tax obligations in what HMRC recognise is a complex area.

HMRC say that they presume that most landlords want to make a correct return but that many may need help to understand exactly how to do so. Their approach "will focus on giving landlords improved access to guidance and support so that they can understand how to calculate their own tax liabilities and, where there is tax to pay, using the lightest possible touch to ensure that the correct amount is paid".

Anyone who has felt the "light touch" of the taxman in their pocket may want some alternative advice. It seems clear that the Revenue are looking at the tax returns of landlords – if you are not sure what you should declare or what you can claim, we can help as well. ●

Stick to the facts

Suppose you want to fire someone. You have to go through the statutory procedure warning the employee, and there are six reasons which are considered "fair" under the law: conduct, capability, redundancy, retirement, contravention of a law (such as when a van driver loses his licence) and dismissal for some other substantial reason such as reorganisation of the business. If you don't follow the procedure, or the reason isn't on the list, the dismissal will be "unfair" and the employee will be entitled to compensation.

A recent case highlighted the importance of stating the true reason for a dismissal. A union official was sacked after a brawl at an annual picnic, and the reason given was misconduct. The other party to the brawl was not sacked, and the Employment Tribunal decided that the real reason for the sacking was the employee's political views. Compensation was due.

Sometimes a different reason might be cited instead of the true one in order to save the employee's feelings – you might claim they were redundant (their job had disappeared) instead of misconduct or incapability. If that comes out, the dismissal will always be unfair: you have to tell it like it is. ●

It's personal

Office affairs are fraught with difficulty, which is why employers often discourage them – unless the employer is having the affair. In a recent case, a solicitor in a small practice started having an affair with his personal assistant. When he realised that she was having a relationship with another man, he fired her on the spot. She claimed unfair dismissal and sex discrimination.

The solicitor knew that he was "bang to rights" on unfair dismissal – he had not followed the proper procedures, and he didn't have a reason that the law would accept. But he appealed on the discrimination issue, which would have increased the compensation payable. The Employment Appeals Tribunal decided that although this was perhaps to do with sex, it was not sex discrimination. The dismissal was purely because of the breakdown of the relationship between the employer and the employee. ●

Knock knock

VAT registered traders used to expect an inspection by Customs every few years. These days, with staff cutbacks, if you are a good trader who files returns and payments on time, you could go for years without being visited. But there are reports that HMRC are now increasing "surprise visits" on types of business they regard as high risk. These are generally where there is a lot of cash involved, so there is a greater potential – or temptation – for people not to declare all their takings.

What do you do if someone from HMRC turns up unannounced and wants to inspect your premises and your records? The first thing, of course, is to check that they are who they say they are – any properly authorised person should not object to you ringing their office. The next thing is to know what they can do and what they can't. A Customs officer has the right to enter and inspect any premises where a business is carried on, but they can't carry out a search without a search warrant – that means they can't open a drawer or a cupboard.

They can ask for information and explanations, which you have to provide – but you only have to provide them in a reasonable time. "Right now" is not always reasonable, particularly if they call during business hours and you have customers to deal with. Giving answers off the top of your head – to try to be helpful – is often dangerous, as you can give the wrong impression which it will then be hard to shift. Much better to get a list of their queries, say you'll have to check, and take advice before answering.

If they want to take the records away, that has to be reasonable as well. HMRC officers don't always seem to realise that a business needs its records in order to run – they think we prepare the books just for them! So if they want something that you need, they are required to make copies without charging you.

An unannounced visit from HMRC could be a nasty surprise – don't panic, be firm and know your rights. As soon as you can, ask for advice – we'll be happy to help. ●

The daily grind

What's a business journey? If you are travelling on business, your employer can pay your transport costs, including mileage allowances, with no tax charge on you. If it's not a business journey, meeting the cost will be treated as taxable.

The law says that "ordinary commuting" is not a business journey. The idea is that where you choose to live is a personal matter, so the commute from home to work is not "business". "Ordinary commuting" is any journey between your home and a "permanent workplace". If you are travelling between home and a "temporary workplace", that will be business – although calling in somewhere as part of your normal commute won't magically change any part of it into a tax-free journey.

A permanent workplace is somewhere you go regularly, unless it's for a brief task such as a weekly inspection or meter reading. If you spend every Monday in one branch, every Tuesday in another and so on, you can have five permanent workplaces.

Getting this wrong can be expensive – if the employer pays expenses on the basis that something is business travel when it isn't, there can be back tax and penalties to pay when a PAYE inspection comes around. If you want to make sure you are drawing the line in the right place, we can advise you. ●

Computers@home

Up to 5 April 2006, employers could provide their workers with a computer to use at home without incurring any tax charges even if the computer was just used for games. Since then, providing a computer for the first time will trigger an income tax charge if the private use is "significant".

What about the VAT? HMRC have recently announced that a business can claim the VAT back on buying a computer if it is necessary for an employee to have one to carry out the duties of the job. They believe that private use will not be significant where it's a vital business tool.

If it's not essential for the job, the business will only be able to claim back a proportion of the VAT. HMRC say they are willing to accept a reasonable estimate of the split between business and private use – they won't expect a detailed breakdown of all your e-mails. ●

This newsletter is written for the benefit of our clients. Further advice should be obtained before any action is taken.