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# NEWSLETTER

## An ever changing world

As always in the world of tax and business, the last quarter has been very busy. Most notably, Chancellor Alistair Darling presented his first Budget on Wednesday 12 March 2008.

In a surprise announcement, the 'income shifting' rules were delayed for one year. What was not a surprise was that the annual £30,000 charge on non-domiciles has still been introduced but some relaxations have been made to the original proposals.

In the area of capital taxes, the introduction of a flat rate of CGT for individuals and trustees of 18% goes ahead, as does the introduction of a new Entrepreneurs' Relief, which looks suspiciously like Retirement Relief, that the government scrapped in favour of taper relief, that has now been scrapped in favour of Entrepreneurs' Relief! It's a strange old world.

And finally, there is a significant change in inheritance tax relief for married couples and civil partners.

The content of the Budget has been well reported elsewhere but we take the opportunity in the newsletter to highlight a few points for you in relation to Entrepreneurs' Relief, residence and the deferral of the 'income shifting' legislation.

## 'Income shifting' legislation delayed

The introduction of the proposed legislation on 'income shifting' has been delayed until April 2009.

You may well remember that HMRC proposed to legislate following their defeat in the Arctic Systems case. This case involved a husband and wife who owned a company 50/50 and, broadly, took the profits out by way of dividends, again 50/50. HMRC attempted to tax the dividends solely on the husband, as he was performing most of the work which generated the profits of the company.

Following HMRC's defeat in this case, the government published draft legislation to prevent a tax advantage being gained through 'income shifting'. The rules were to start from 6 April 2008 and would have applied to company dividends and profits from a partnership.

The proposed rules had been very widely drafted and would potentially have caught many owner-managed businesses involving husbands, wives and other family members, as well as businesses run by non-family members, leaving many with a substantially higher tax bill.

The government has reconsidered its position following a period of consultation and now believes that a further period of consultation will ensure that legislation in this area provides clarity and certainty for businesses and their advisers.

We will, of course, keep you informed of developments. However, if you have any questions or concerns in the meantime, please do not hesitate to contact us.



# Employer provided vans

**The benefit in relation to employer provided vans increased significantly last year. Now is the time of year for P11D completion and if your policy and procedures do not stand up to HMRC scrutiny you could get caught out.**

Three years ago, a new regime was introduced for employer provided vans. These changes were expected to remove over 85% of van users from any benefit in kind charge.

There is no benefit in kind charge in respect of an employer provided van where the 'restricted private use' condition is met.

Where the condition is not met the charge for unrestricted private use of the van is £3,000. Where an employer provides fuel for unrestricted private use an additional fuel charge of £500 may also apply. So, meeting the 'restricted private use' condition is vital in avoiding a hefty tax bill.

## What does the condition say?

The 'restricted private use' condition is met if:

- the terms on which the van is made available to the employee prohibit its private use other than for ordinary commuting or travel between two places that is, for practical purposes, substantially ordinary commuting; and
- neither the employee nor a member of their family or household makes private use of the van other than for those purposes; and

- the van is available to the employee mainly for use for the purposes of the employee's business travel. This means that the van cannot be used for commuting purposes alone.

So ordinary commuting in an employer provided van is tax free but no other private use is allowed. HMRC have indicated that they will ignore certain occasional private journeys eg a one-off trip to the dentist but this guidance does not give much margin for error.

## Proving the conditions are met

It is possible to satisfy these tests but HMRC may wish to see proof. As HMRC say, whether the conditions are met is a question of fact. Several practical issues arise.

Firstly, it is vital to have a formal, written policy, which restricts the private use to only ordinary commuting.

Secondly, the term 'ordinary commuting' has a particular tax meaning. Although the simplest example of ordinary commuting is home to office, it can be far more complicated than this, particularly for site-based employees.

Finally, proof of actual journeys is recommended. Particularly useful is a full

mileage log, indicating the date of the journey, the driver, the mileage of the van at the start and end of the journey and where the journey was to.

As you can see, the rules are not straight forward. To avoid problems with HMRC, proper policies and systems need to be implemented. Please contact us if this is an area you would like to discuss further.



# Home is where the tax is

We read that the UK housing market is in the doldrums. Historically, situations such as this tend to be relatively short term. The reality is that house prices are at an all time high. This is very good news if you want to sell or to realise some of the equity in your home. It can mean bad news where the family home represents a significant part of the estate of an individual who dies. Inheritance tax (IHT) planning with

the family home has become a major issue.

Let's say right at the start that no tax planning should impair your ability to live worry free and secure in your home. There has to be a balance and personal needs and priorities must take precedence over tax planning. It is also important to say that arrangements to try to give away an interest in a home in lifetime are fraught with difficulties caused by some complex tax anti-avoidance rules.

## Using the nil rate band

In considering the tax options, the starting point must be to look at the impact of the new IHT rules. These rules allow any proportion of the nil rate band unused on the death of the first spouse or civil partner to be used on the death of the surviving spouse or civil partner, where the second death occurs on or after 9 October 2007. The nil rate band is currently worth £312,000, so a potential maximum of £624,000 is available on the second death.

For many people, where the only significant asset in the estate is the family home and the value of that property is currently well below £624,000, the IHT planning can be kept very simple - leave the property to the survivor on the first death

and let two nil rate bands hopefully eliminate the tax problem on the second death.

## Transfer of interest

Where the property is already worth around or above the two nil rate band figure of £624,000, there may be some advantage in looking to make a transfer on the first death. This can only be done if the property is owned as tenants in common. Where the property is owned as joint tenants, it will pass automatically to the surviving spouse or civil partner.

The transfer of the first spouse's or civil partner's interest (up to the value of the then nil rate band) could be into a trust written in their Will or it could be made as a direct transfer to the children. In either situation, the occupancy of the property by the survivor should be protected and half of the future growth in the property will take place outside of their estate. The trust route may also enable the very important CGT exemption for private residences to be maintained.

This is a complex subject. If you would like further advice on this area please contact us and we would be happy to review your options with you.



## A bit of relief for some

The decision to change the basis of capital gains tax (CGT) for individuals and trustees by removing taper relief and indexation for disposals on or after 6 April 2008, and to charge gains at a flat rate of 18%, was greeted with outrage by the business community. The removal of an effective 10% higher rate of tax on gains on family company shares and commercial property leaves many individuals with a potentially large increase in their tax liability when they eventually dispose of their business assets.

### A new relief

Some small glimmer of hope in an otherwise gloomy situation came with the announcement that a new relief, known as Entrepreneurs' Relief (ER), applies in some situations for disposals on or after 6 April 2008. This relief means that some disposals will still attract an effective rate of CGT of 10%.

The relief works by reducing gains on qualifying assets by 4/9ths, leaving the balance of the gain taxable at 18%. By an amazing coincidence this gives an effective rate of 10%. The relief will be available on gains of up to £1m over an individual's lifetime, starting from 6 April 2008, so the impact of ER will be diminished once that limit is passed, whether on a single disposal or on a cumulative basis. The maximum ER which will be available is £444,444 (£1m x 4/9ths) and this means that the effective rate of CGT will climb towards, but will never actually reach, 18% for gains exceeding £1m.

### Which gains qualify for relief?

The categories of assets that qualify for ER are not as wide as those for business asset taper and some asset disposals will not obtain any relief at all. The relief may apply to gains arising on the disposal of:

- the whole or part of a business but not necessarily on the disposal of assets used in a business;
- shares in a trading company provided that, broadly, the shareholder has at least 5% of the shares and voting rights and has been an officer or employee of the company;
- business assets held by trustees in certain limited situations;
- assets disposed of as part of the main disposal of shares or an interest in a partnership.

### What conditions must be satisfied?

The conditions for the relief must generally be satisfied throughout the period of 12 months leading up to the date of the disposal. A couple of examples illustrate the limitations of the relief.

Jim McDee has a farm and sells several fields to a developer for a large gain. He retains the farmyard and continues to farm. Under the old rules, he may have been able to claim business asset taper relief on the disposal. Under the new rules, no ER will be available because he has not disposed of the whole or part of the business.

Jack Spratt had originally set up Low Fat Foods Ltd and has always held 40% of the shares. He retired from the board several years ago to let the younger generation take over the running of the company. Mega Foods plc make an offer to buy out the shares but Jack will get no ER because he is not an employee or officer of the company even though his shareholding meets the 5% voting rights requirement.

It is important that careful planning is done well in advance of any disposal and you may wish to explore these issues with us.

## Minimum wage changes ahead

It has been announced that the new National Minimum Wage (NMW) rates from 1 October 2008 will be as follows:

|                          |                        |
|--------------------------|------------------------|
| Workers aged 22 and over | £5.73 (£5.52) per hour |
| Workers aged 18-21       | £4.77 (£4.60) per hour |
| Workers aged 16-17       | £3.53 (£3.40) per hour |

The NMW is an important cornerstone of government strategy aimed at providing employees with decent minimum standards of pay. The government are also proposing a number of changes to how the NMW is enforced, with the intention that these new provisions will come into force on 1 October 2008.

The intention is to create a clearer deterrent to non compliant businesses and to provide a fairer way of dealing with arrears of NMW. The proposed changes will introduce:

- a new method of calculating arrears for workers who have been underpaid;
- a penalty payment for employers who do not pay their workers the NMW;
- new inspection powers for NMW compliance officers; and
- a strengthening of the criminal regime for NMW offences.

HMRC are currently responsible for enforcing the operation of the NMW rules. The rules cannot be enforced by HMRC across all businesses at the same time, so HMRC have opted to look at particular business sectors in turn. Sectors which HMRC are currently interested in are hairdressing, childcare provision and the hospitality industry.

If you have any concerns or questions about the NMW rules, please do get in touch.



## Illegal working changes

From 29 February 2008 the Immigration, Asylum and Nationality Act 2006 increased the civil penalty which can be imposed on an employer to a maximum of £10,000 for every illegal worker employed in the UK. It also introduced a new criminal offence of knowingly employing an illegal worker, with a maximum penalty of two years in prison and/or an unlimited fine.

An employer can avoid both a civil penalty and committing a criminal offence by checking, on recruitment, that workers have a right to work in the UK but to obtain this protection the employer must make the checks before the individual starts work.

There are two lists of acceptable documents for checking identity, similar to the lists which employers have used since 1997. List A contains items, such as a British passport, which have no time limit on working in the UK. List B sets out a list of documents which carry restrictions on the length of time individuals are able to spend in the UK. A significant change is that employers will have to carry out annual checks for those workers whose documents appear on List B, such as work permit holders.

If you would like to read more on this area, please see [www.ukba.homeoffice.gov.uk/employers](http://www.ukba.homeoffice.gov.uk/employers) or get in touch with your usual contact.



# Charities Act 2006 - where are we now?

The Charities Act 2006 (CA06) was passed by parliament back in November 2006 and, while some of its provisions came into effect in February 2007, more come into effect this year. The Act principally affects charities in England and Wales and has been welcomed by the Charity Commission, the regulator of the English and Welsh charity sector, as it aims to help reduce some of the bureaucracy that charities face.

There have been four commencement orders issued to date, which bring the sections of CA06 into force. One particular area of interest is

the levels at which charities face external scrutiny, either as an audit or an examination, as these have now been increased.

## The new thresholds

There are now similar thresholds for charities that are limited companies and those that are not.

Broadly, if a charity has an annual income of less than £500,000 it will not be required to have an audit. This will specifically depend on whether the charity is a limited company or not, on levels of assets or annual income and whether a charity's governing document requires an audit. There are also specific limits for groups. Of course, an audit can be requested where a charity considers that the external scrutiny that this brings is beneficial.

Accounting regulations for charities were changed in Scotland from April 2006. From an external scrutiny perspective, while differences remain, the legislative requirements applying in the two regimes are now much closer.

If you are a trustee of a small charity we would be pleased to discuss these changes in more detail with you.

## Companies Act 2006 - the next stage

The ongoing implementation of the Companies Act 2006 (the Act) continues and one of the key implementation dates, 6 April 2008, has now passed. This important date saw the sections of the new Act that relate to accounts and reports and audit come into force and some of the practical changes are highlighted below.

### Size matters!

The financial limits that determine whether a company or group qualifies as small or medium-sized have been increased for accounting periods beginning on or after 6 April 2008.

| Individual company limits         | Small company limits | Medium-sized company limits |
|-----------------------------------|----------------------|-----------------------------|
| Turnover not more than            | £6.5m (£5.6m)        | £25.9m (£22.8m)             |
| Balance sheet total not more than | £3.26m (£2.8m)       | £12.9m (£11.4m)             |
| Number of employees not more than | 50 (50)              | 250 (250)                   |

The limits are important as they determine whether a company can benefit from the preparation of simpler accounts, file abbreviated accounts on the public record at Companies House and qualify for audit exemption.

### The group question

The new Act removes the exemption from the preparation of medium-sized group accounts, so the new higher limits shown below are particularly important for those affected.

| Group limits                            | Small group limits | Medium-sized group limits |
|---|--------------------|---------------------------|
| Net turnover not more than              | £6.5m (£5.6m)      | £25.9m (£22.8m)           |
| Gross turnover not more than            | £7.8m (£6.72m)     | £31.1m (£27.36m)          |
| Net balance sheet total not more than   | £3.26m (£2.8m)     | £12.9m (£11.4m)           |
| Gross balance sheet total not more than | £3.9m (£3.36m)     | £15.5m (£13.68m)          |
| Number of employees not more than       | 50 (50)            | 250 (250)                 |

Please contact us at an early stage if you think that these new limits will affect your company.

### Shorter filing periods

The new Act also shortens the filing deadline to nine months from the year end for private companies (previously ten months) and to six months for public companies (previously seven months). These changes are effective for accounting periods beginning on or after 6 April 2008. That will be April 2009 year ends and onwards for most.

### Higher late filing penalties

Proposals to increase the penalties associated with late filing of accounts at Companies House have also been finalised.

| Length of delay, measured from the date the accounts are due: | Private company |        | Public company |        |
|---|-----------------|--------|----------------|--------|
|   | Current         | New    | Current        | New    |
| Up to 1 month   | £100            | £150   | £500           | £750   |
| 1 to 3 months   | £100            | £375   | £500           | £1,500 |
| 3 to 6 months   | £250            | £750   | £1,000         | £3,000 |
| 6 to 12 months  | £500            | £1,500 | £2,000         | £7,500 |
| More than 12 months   | £1,000          | £1,500 | £5,000         | £7,500 |

The increases will be introduced from 1 February 2009. Where accounts are filed under the new Act, the penalties will be doubled for late filing in two successive years.

### The future of the company secretary

From 6 April 2008 private companies are no longer required to have a company secretary, although they may continue to have one if they wish. There are a number of practical considerations associated with this decision, as many of the tasks that the company secretary traditionally performed remain.

You should review your company's Articles of Association to establish whether the wording requires you to have a company secretary. If you do decide to remove your company secretary, you may need to make changes to the Articles and form 288b will need to be filed at Companies House.

If you would like to discuss how any of these changes might affect your company in more detail please contact us.