



WINTER NEWSLETTER

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.

Pre Budget Report 2009

As we go to press on this newsletter, Chancellor of the Exchequer Alistair Darling has just announced Wednesday 9th December as the date for his last Pre Budget Statement before next year's impending General Election. As always there are likely to be significant opportunities arising from this preview of the main budget statement which will follow in Spring.

Visit our website at www.bulleydavey.co.uk for the latest information or send us an email to bdadmin@bulleydavey.co.uk and we will register your details to receive our summary of the main proposals by email the morning after his speech. Printed summaries will also be available from any of our offices on request.

Celebration of long service milestones

See our back page for details of the long service achievements of Keith Davis (pictured left) and Paul Jex (pictured right).



VAT changes around the corner

First quarter

1 January 2010 heralds the restoration of 17.5% as the standard rate of VAT, the effect of which is covered below. It is also the start date for the package of cross border VAT changes announced initially at Budget 2009 and now in Finance Act 2009.

For any business involved in providing or purchasing international services, a review of the impact of these changes on their VAT accounting is essential. The key areas of change include:

- the place of supply of services rules
- the time of supply of services rules
- the reporting requirements and deadlines for EC sales lists
- VAT refund procedures where VAT is paid in another EU member state.

Second quarter

For VAT accounting periods commencing 1 April 2010, returns will have to be filed online where annual turnover (exclusive of VAT) exceeds £100,000. Electronic payment will also be required. The online filing requirement will also apply to all newly registered businesses from that date.

This is subject to HMRC's own caveat that 'all necessary regulations are passed' in time. All affected businesses should receive correspondence advising of the changes early in 2010.

Back to 17.5%

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.

Please contact us for advice on any specific issues.

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.



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.



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.



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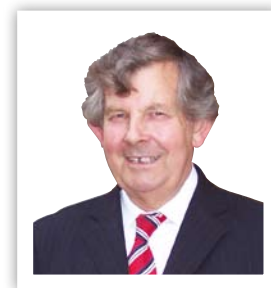
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Long service milestones

Our congratulations go to Keith Davis and Paul Jex for their outstanding achievements during their employment with the firm.

Keith Davis - 50 years' service

Keith started work for the firm in September 1959 as a 17 year old school leaver, well before most of the current staff and even the majority of the partners were born. He was based at Peterborough when the offices were in Long Causeway and the firm was known as Maurice E Bulley & Co.



When Keith moved to the Oundle office in 1963 accountants were still using paper, pens and brain power to perform the work that is now done by computers and calculators, secretaries used typewriters and carbon papers, and materiality meant everything balanced to the (old) penny!

Keith was presented with a gift certificate by David Webb to commemorate the occasion.

Paul Jex - 40 years' service

Paul started working for the firm in August 1969 at the age of 16 in our Peterborough office before transferring to Spalding in 1972. At that time our Spalding office was based in The Crescent and Paul, in his role as manager, played a key part in the growth of the firm which saw a move to our current premises in London Road in 1988.



To mark the special occasion the office's resident partners, Peter Wright and Andy Atkins, presented Paul with Thomas Cook holiday vouchers, which will come in handy as Paul and his wife Jane are currently planning a trip to Australia to visit relatives.

Pictured are Spalding office's resident partners Peter Wright (left) and Andy Atkins (right) with Paul in the centre.

Economic Outlook and Pensions Seminar

Our Spalding office is hosting a seminar on 4th December in Spalding in partnership with Oakhouse Financial Advisors.

The speakers will be Aiden Kierney from Aberdeen Fund Managers and Jamie Clark from Scottish Life.

Aiden is one of the UK's leading asset management specialists and will be talking on "Global Markets and Where We Are on the Road to Recovery". Jamie will be talking on "Compulsory Pension Contributions and Changes to Retirement Age". He has more than 20 years' experience in the pension industry and is a self confessed pension geek!

The new personal pension rules affect all employers and the seminar will give an informative guide to the new rules ahead of the 2012 changeover, including strategies to assist in the implementation of the onerous changes which are planned.

The seminar starts at 11am with a buffet lunch to follow. To book your place, or for further information, please contact our Spalding office on 01775 766633 or email tracey.wood@bulleydavey.co.uk

