

2009

AUTUMN NEWS



Marston House
5 Elmdon Lane
Marston Green
Solihull
B37 7DL

Tel: 0121 788 3311

Fax: 0121 788 3322

Email: mail@sephton.co.uk

Web: www.sephton.co.uk

P L Houlston FCA
S D Connell FCCA
D P Carter FCCA

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Tin hats required

It is the party conference season in the Autumn before a General Election, and the economy is in dire straits. All the political parties are bandying about promises and threats. We have been told some of what Mr Darling proposes to do to fill the holes in the national purse from April 2010, but all the opinion polls suggest that it will be Mr Osborne's problem instead shortly afterwards. So it's hard to plan ahead.

One thing seems certain: whether the national accounts will be balanced by deep cuts in public spending or something less drastic, there will surely have to be increases in taxation from whichever party is in power. The deficit looks simply too large for cuts alone to work. The parties argue about the economics of cuts and taxes – we have to hope that they get the balance right and do not stall the economy, making life worse for everyone – but there will have to be both.

The nature of the tax increases and where they will fall may be uncertain, but we will be keeping alert for the traps the Chancellor will set and any opportunities for saving you money. This newsletter explains some of the big issues at the moment – but watch out for more fireworks as the election gets nearer! ●

An inspector calls

Since 1 April 2009, HMRC have had new powers to check up on taxpayers' returns. For the first time the law envisages tax inspectors calling to look at the income or corporation tax records, possibly unannounced. VAT-registered traders are familiar with the idea, but it's new for taxes on income and profits.

It's unlikely that many people will be visited, and an unannounced visit will only be made when HMRC have reason to believe something is seriously wrong. Even so, it's important to be aware of the new rules and to think what you will do if you are picked on.

The first thing is to take any visit seriously, even if they say it's routine. You are entitled to have

your tax adviser present, and you can even delay the start of an unannounced visit for a short time while summoning help. It's important to appreciate that the first, unconsidered answer to a question – given innocently to be helpful or to get rid of the visitor – may create all sorts of problems later if the information was wrong or suggested that something had not been accounted for correctly.

Businesses have disaster plans that they draw up, communicate to staff and hope never to use. A plan for dealing with a visit from HMRC may be a good idea for the same reasons. If you want help drawing one up, or during an inspection, we are here to advise you. ●

On the job training

If your employer pays for you to go on a training course, you don't get taxed on the cost. It's part of the job to go. That's obvious. But what if you decide to pay for your own course? Up to now, the taxman has always used a Catch-22 argument: if the course was necessary, your employer would pay. If you have to pay, it can't be necessary, so you can't get a deduction for the expense.

The High Court has recently rejected this argument in the case of a doctor who had to pay to attend courses, conferences and meetings. The judge accepted that the training could reasonably be regarded as a requirement of her job, and it was not simply an optional extra that she chose to add on for her own benefit. She was allowed to deduct the cost of the courses and also travel and subsistence expenses while on them.

That's an unusual decision, but an encouraging one. If you spend money on training, either as an employer or as an employee, you may want to check whether you are setting it up in a tax-efficient way. We can advise you. ●

Expenses A–Z

HMRC have published a new "A to Z guide" of the tax treatment of employee benefits. It clarifies how benefits are taxed, and sets out the conditions where a benefit isn't taxed at all. It's a useful work of reference that runs from "Accommodation – living" to... well, HMRC couldn't think of anything beginning with X, Y or Z, so the last entry is "Workshop equipment and supplies". Who will be the first employer to offer a xylophone or a zebra?

If you want to check the tax treatment of your benefits in kind, or look for tax efficient ways of providing remuneration, we will be happy to help. ●

End of the holidays

Remember that Stamp Duty Land Tax is currently "on holiday" for properties up to £175,000 in value. From 1 January 2010, the "normal" threshold of £125,000 for the 1% rate will be restored. On a property costing £170,000, there will be an immediate increase in cost of £1,700, because SDLT is charged on the whole consideration rather than just the amount above the threshold.

If you are thinking of buying a property which currently benefits from this rule, it's worth getting on with it before Christmas. ●

Trust in money

There is an old saying – invented by a lawyer – "do not put your trust in money, but put your money in trust". There are many reasons for setting up trusts, but one of the commonest is to allow someone to look after an inheritance for a beneficiary who is too young to have full control of substantial amounts of money.

The trouble is that HMRC have tended to think of trusts as ways to avoid tax, and the charges have become more severe in recent years – in particular to Inheritance Tax. Now Income Tax is going to jump substantially on 6 April 2010 for all discretionary trusts: they will be subject to the new top rate of income tax of 50% on income over £1,000. If the income is

paid out, the tax paid by the trustees will usually be a credit in the hands of the beneficiary, but the huge hike in current tax charges is clearly a disadvantage.

Anyone who is the trustee or beneficiary of a discretionary trust should be considering their options, which include changing the terms so that it is a more favourably taxed interest-in-possession trust, or winding up the trust altogether. Unfortunately neither of these choices preserves the main aim of the trust: to protect the beneficiary from having access to the money.

If you are affected by these changes, we will be happy to look at the alternatives with you. ●

Good health

Healthcare is not supposed to be VATable, whether it's on the NHS or private. There have been several arguments recently about what qualifies. HMRC reckon that cosmetic surgery is not really healthcare, because it's not about improving a person's wellbeing – they are on dangerous and arguable ground, but the Tribunal agreed with them.

On the other hand, an organisation that helps people give up smoking was held to be involved in healthcare. Although smoking might be regarded as self-inflicted and not really an illness, the Tribunal agreed with the trader that helping people to stop would improve their health.

On the other hand – you need a lot of hands to deal with VAT – a business selling dietary food packs together with advice on losing weight was held not to qualify for any relief. They weren't just selling food, which isn't normally VATable – and the advice didn't qualify as healthcare. So they had to charge VAT on the whole thing.

In case VAT is driving you mad, it's just been announced that psychologists are



now regarded as a branch of the medical profession and they can usually supply their services without charging VAT. If you need VAT advice from an accountant to keep you out of the psychiatrist's chair, we are happy to help! ●

Pay in lieu

In the current economic climate more people than usual are having to think about the tax consequences of losing their job. The sack is bad enough without having an argument with the taxman. It's well-known that £30,000 of a golden handshake is supposed to be tax-free, but it's less well-known that HMRC aren't always willing to accept that the exemption applies.

The rule allows a payment for breach of contract to fall outside tax – "here's thirty grand to clear your desk and go quietly, never mind your employment rights". If the contract describes the payment as something that will happen when the job ends, it isn't exempt at all –

it's as much part of the contractual, taxable pay as the monthly salary and the annual bonus. This was applied recently to a payment in lieu of notice – the company had the choice in the contract to give three months' notice or make a payment in lieu, and the payment was therefore taxable.

Once a contract's been drawn up, it's usually hard to change the tax effect of it. It's still worth discussing because an unexpected tax charge is even more unwelcome than one you know about. If you are involved in redundancy – on the receiving or the giving end – and you want to discuss the tax consequences, we will be happy to advise you. ●

Foreign peril



If you are selling goods to businesses abroad, you shouldn't have to charge VAT. It should either be an export out of the EU, or it should be a despatch to a VAT-registered customer in another EU country. You get VAT back on your costs but your customer only pays you the net price.

The problem is that there are a lot of conditions to meet, and if you miss some

Beat the hike

There are significant tax increases coming on 6 April 2010 for anyone who earns over £100,000 a year. Tax allowances are restricted at that level, and there will be a new top rate of 50% for anyone earning over £150,000. If you are affected, there are things you can do to reduce the impact. One of the simplest is to advance income from next year into this – you might end up paying the tax a little earlier, but if you pay 40% rather than 50%, that's a good rate of return.

If you are concerned about the impact of the new rates of tax, we will be happy to discuss your options. ●

All change

When the VAT rate was cut from 17.5% to 15% on 1 December 2008, it was a shock – we had a week's notice for something that had not happened since the early 1990s. When it goes back up on 1 January 2010 we have had over a year to think about it. It will still be tricky, and it will be necessary to be prepared for it. For example, if you agree a price for a supply in December, but delivery falls in January, the law allows the supplier to change the contracted price to reflect the increase in the VAT rate. If you are a customer who can't recover VAT, that's important to know – and if you are a supplier who doesn't want to annoy your customers, it's important to explain.

If you want to discuss the rules which cover an increase in the VAT rate, we can help. ●

of them you might find that the UK taxman still wants the VAT even though you didn't collect it from your customer. It's crucial to get the paperwork right – evidence that the goods were despatched out of the UK, and your customer's VAT number on the invoice if it's within the EU. The taxman is very picky about this, mainly because of the huge losses that "carousel fraud" has caused over the last few years – the honest trader has a harder job to prove that the transaction is genuine.

A recent case showed how easy it is to fall foul of the rules. A UK trader received an order from a company registered in Belize to send some goods to Poland. The trader checked with the HMRC Advice Line, but didn't make the question clear enough. It wasn't an export because the goods stayed in the EU – and it wasn't an EU despatch because the customer was outside the EU. The UK company fell between two stools and had to pay the VAT.

If you are in doubt about the conditions for zero-rating international sales, we can advise you. ●

Pension pot

If you earn at least £150,000 a year, you will be concerned about the new 50% tax rate coming in on 6 April 2010. You should also be looking at the new restrictions on tax relief for pension contributions. Although that's only due to bite on 6 April 2011, there are rules now to stop people advancing the contributions they would make after that date to take advantage of the more favourable relief now.

What this means is that there will be a tax hit for anyone who pays more than their regular contributions and more than £20,000 a year from 22 April 2009 to 5 April 2011. Regular contributions are payments under a pre-existing contract which are made quarterly or more frequently, but a higher limit applies if irregular contributions averaging up to £30,000 a year were made in each of 2006/07, 2007/08 and 2008/09. The effect of the charge is to withdraw the 20% higher rate relief that would have been enjoyed at the top rate of tax.

This does not affect people with incomes below £150,000 or pension contributions below £20,000 a year. If you are above those limits, or you are close to them, we can advise you on how to avoid the hit. ●



Opportunity knocks

In 2007, the taxman offered an "opportunity to disclose" to people who had undeclared income or gains in offshore accounts. This was prompted by HMRC obtaining lists of people who had offshore accounts with the high street banks, and finding that there were far more of them than declared foreign income on their tax returns. If people came forward then to pay the outstanding tax and interest on it, they were offered only a 10% penalty instead of the potential maximum 100%.

Now there will be another opportunity, running from September 2009 to 12 March 2010. The same 10% penalty is offered, but it will be doubled to 20% for anyone who knew about the previous opportunity and failed to come forward. It will be essential to notify HMRC by 30 November 2009 that a disclosure is coming, with the details to follow later. Anyone who fails to take advantage now can expect a higher penalty if they are discovered later by HMRC.

If you have any foreign accounts and are not sure whether you have anything to declare, we can advise you. ●

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From 6 October 2009, anyone who will be 50 in the current tax year – by 5 April 2010 – can invest £10,200 in a tax-free ISA for 2009/10. The limit goes up from its previous £7,200pa for everyone else in 2010/11. Up to £5,100 can be invested in a cash account; the rest will have to be invested in stocks and shares. ●

Quadruple entry

A trader recently registered for VAT and did his own returns. He reasoned that his costs would go in a 12 month period of account for income tax, so he put the VAT on a big purchase – £6,902 – on all four VAT returns in his first 12 months. HMRC decided to investigate the same figure apparently being claimed four times. Surprisingly, he appealed to the Tribunal, arguing that this was how VAT ought to be done. He found that this was a minority opinion.

People don't often get VAT accounting this wrong, but it is a reminder that HMRC expect hairdressers, newsagents, decorators and taxi drivers to account correctly for VAT, as well as lawyers and accountants. If you are not sure how to do it, we can help. ●

Last orders

The VAT rate is going back up to 17.5% at midnight on 31 December 2009. This could be tricky for businesses which are in the middle of making VATable sales at exactly that moment – while everyone in the pub is linking hands for Auld Lang Syne, the bartender would have to be changing all the prices. A government minister has announced that the old rate can be used for a few hours afterwards – so the VAT problem comes with the hangover in the morning rather than in the middle of the night! ●



No smoke without fire

An anonymous employee tipped off the local council that people were smoking in his employer's premises even though that has been prohibited since 1 July 2007. Council officers visited and found evidence that this was the case. They issued a warning, but returned after the whistleblower told them that nothing had changed. The operations director was found smoking at his desk and was issued with a £50 fixed penalty. He refused to pay, and did not turn up in court to defend himself so the fine was increased to £265.

It's a reminder of the responsibilities of all employers to make sure that their premises are smoke-free. If anyone doesn't like smoke, they have the power and the right to bring down the law on the firm – even if it's a junior employee, rather than a director, who is smoking. ●

Be prepared

Apart from the increase in the VAT rate on 1 January 2010, there is another set of changes which will affect anyone who supplies goods or services to customers in the rest of the EU. There are new rules for where some supplies are charged to VAT, and new requirements to file reports of the supplies that you make to foreign-registered customers. Everyone who has any foreign sales needs to be ready for these changes in good time. There's some general information on the HMRC website, but if you want some help in understanding how it applies to your particular business, we will be happy to advise you. ●

Loss and profit

If you are currently making losses in your business, you can take advantage of the "carry back" rules which allow you to get back income or corporation tax you paid on past profits. Normally you can only carry a loss back to the previous year. For income tax traders with losses in 2008/09 or 2009/10, and for companies with losses in accounting periods ending between 24 November 2008 to 23 November 2010, the carry back is extended to 3 years – but only for the first £50,000 of the current loss.

If you are currently making a loss which you expect to be able to carry back, you can defer the payment of the tax liability for the previous period – normally you would have to pay the tax and claim it back when you can produce the accounts to prove that you made the loss.

Bear in mind that the Corporation Tax rate on small company profits is going up from April 2010 to 22%. If you carry a loss back to 2006 you might only get relief at 19%, when it would be 22% going forward. However, 19% of a bird in the hand may be worth more than 22% of a bird in the bush!

If you are making losses and want to make sure you get the best relief for tax purposes, we can work out the numbers for you. ●

Dirty Laundry

The Money Laundering Regulations are supposed to make it harder for criminals to move or disguise the proceeds of crime. Businesses that might otherwise handle or help with money laundering – banks, casinos, accountants, lawyers – have to register and have to report suspicious activity to the Serious Organised Crime Agency.

The scope of the rules has extended over the years. From 31 July 2009 it now applies to businesses involved in property sales, such as estate agents, and to those providing consumer credit. They have until 31 January 2010 to register. Companies that deal in cash transactions with a value of € 15,000 or more also have to register – that could include car dealers, builders and jewellers.

If you are supposed to be registered and you aren't, directors are exposed to unlimited financial penalties and even jail. At the moment, the authorities are not issuing heavy fines for failure to register – it's more likely to be a slap on the wrist and a reminder to do better in future. But if you think you should be registered, it's important to look into it before they do come knocking. ●



Scrappage

No matter where Mr Darling created this word from – many people have taken advantage of it. What about tax? If you traded in a company car, it will be treated as disposed of for nothing, even if you enjoyed an allowance of £2,000 for scrapping it. If you can claim Capital Allowances on the new car, you have to knock off the £2,000 you didn't have to pay towards it. And if you are taxed on the benefit in kind of using it, that's based on the list price, which isn't affected by the scrappage allowance at all.

Confused? It's more complicated still for VAT, but fortunately the VAT rules don't affect many people – motor manufacturers, dealers, and the very few who can claim the VAT back on the purchase of a car. If you are one of those, or if you've traded in an old company banger and want to be sure you've done the tax computation correctly, we can help. ●

Da Vinci or PAYE?

Some PAYE coding notices might have been devised to conceal the location of the Holy Grail. It's

estimated that about half of them are wrong, and HMRC frequently send out revised codings without an obvious reason. The simplest thing to understand is this: if an "L" or "T" code number is low, you will suffer more PAYE than you otherwise would. If the number starts with a K, it's effectively a tax charge, and you will suffer more tax the higher it is. If you fill in a tax return at the end of the year, an unfavourable code will be corrected in the end, but they will have had your money for a year and a half.

HMRC often try to collect tax on savings income or rent through the PAYE code. They are entitled to try this on, but you are entitled to refuse. If they put the right numbers on the code it can save you filling in a tax return, but that's fairly unlikely. So you might as well ask for the code only to deal with employment income – pay and benefits – and leave the other income for later. HMRC will correct a code if asked, but it may take some time. If you ask for a change after January they may not issue a revised code before the March payslip is issued, and then it would be too late to affect your PAYE for the year.

If you are not sure what your code should be, or you just want to understand what it means, we can explain it. ●