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CHARTERED ACCOUNTANTS

BUSINESS UPDATE

February 2010

Pre-Budget Report 2009 - the detail	1
Focus on junior markets	4
Company tax return filing	6
Changes to Companies House filing	7
VAT - online filing	8
VAT - option to tax	9
VAT - place of supply of services	9
Directors - more privacy	10
Information request powers	11
Alternative pension plans	12
UK tax net tightens	13
Preparing for the 50% tax rate	14
Seen to be green	14



Editor's comment

This edition of Business Update features a reminder of the detailed points in December's Pre-Budget Report as they apply to businesses and their owners. In "Focus on junior markets" we review activity in the AIM and PLUS Markets and comment on the growing importance of PLUS Markets for smaller companies.

We cover the move towards electronic filing of accounts, Corporation Tax and VAT returns and the steps that businesses will soon need to take. With the 50% rate in Income Tax looming, we consider whether EFURBS may have a role to play in funding pension arrangements and provide the location of our technical brief on planning for the 50% tax rate.

On page 9 we cover a couple of important changes to VAT – a tightening of the rules on recovering input tax on property developments and changes on the place of supply of services. We also bring you up to date with HMRC's growing powers to obtain information on taxpayers (page 11) and report a cautionary tale (the Laertstate case on page 13) illustrating how easy it is for a company to be regarded by HMRC as UK resident and subject to UK tax, despite the intentions of the shareholders.

The Companies Act 2006 has now at last been fully implemented and on page 10 we summarise measures which provide directors with some privacy.

Finally, we include a request for those who wish to receive future editions of Business Update electronically ("Seen to be green", page 14).

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PRE-BUDGET REPORT 2009 - THE DETAIL

01

We published a summary of the key changes in the Pre-Budget Report immediately following its release.

This article provides a more detailed analysis of the changes and how they affect businesses.

Corporation Tax rates

The planned rise in the small companies rate to 22% has been deferred until 1 April 2011. Therefore the corporation tax rates remain unchanged at 21%.

100% first year capital allowances

With effect from 1 April 2010 for corporation tax and 6 April 2010 for income tax the 100% first year capital allowances will also apply to the purchase of new electric vans by businesses.

This provision is subject to the confirmation of the state aid available.

Corporation Tax - research and development tax relief

The Treasury has announced a slight change to this relief, which should allow more companies to qualify.

Currently it is a requirement that the company making the claim for the additional relief will own the resulting intellectual property. This requirement will be removed for any expenditure incurred by a "small or medium sized" company on R&D in an accounting period ending on or after 9 December 2009.

Corporation Tax - worldwide debt cap

Further to the controversial anti-avoidance rules enacted by the

Finance Act 2009, some amendments have been announced which have arisen as a result of consultation and deal with anomalies and unintended consequences of the legislation. The legislation restricts the deductibility of interest expenses for UK companies where the interest expense in the UK is greater than the financing costs of the worldwide group.

The changes include amendments to the "gateway test" to take account of different accounting treatments within the international group, an exemption for securitisation companies and special rules for partnerships and hybrid entities.

Corporation Tax - Patent Box

In order to strengthen the incentives to invest in innovative industries and ensure the UK remains an attractive location for innovation, the Government will introduce a Patent Box, a reduced rate of Corporation Tax applying to income from patents, from April 2013. There will be consultation with business in time for Finance Bill 2011 on the detailed design of the Patent Box, which will apply to patents granted after the legislation is passed.

Taxation of Foreign Branches

The HMRC notes state "There will be preliminary discussions

concerning the possibility of a move to exemption for foreign branch profits. No decision has been taken about whether such a change will be implemented and the purpose of the announcement is to provide for debate with business about the merits of such a change and to identify important technical and policy issues related to it."

Changes in accounting standards

The International Accounting Standards Board (IASB) is proposing a number of changes to the way in which financial instruments, such as loans, securities and derivatives, are treated for accounting purposes. Since the tax treatment of such instruments is based on the accounting treatment, this has implications for the tax rules on loans, derivatives and sale and repurchase agreements (REPOS).

02

The Government has announced that, where necessary, changes to tax rules will be made in the Finance Bill 2010 to ensure that where companies adopt the new accounting treatment the tax position will continue to mirror the accounting position, possibly with retrospective effect if the accounting treatment is also adopted retrospectively.

Increase in Class 1 and 4 National Insurance rates in 2011-12

The 2008 Pre-Budget Report announced increases to the rates paid on the various classes of National Insurance Contributions (NICs) by 0.5% with effect from 6 April 2011. A further 0.5% increase was announced in the 2009 Pre-Budget Report, making the total increase 1% with effect from 6 April 2011. The increase applies to both employees' and employers' contributions so that a total increase of 2% will apply to those drawing a salary from their own company.

The rates are as follows:

<i>CLASS OF NIC</i>	<i>CURRENT RATE</i>	<i>RATE FOR 2011-12 AS ANNOUNCED IN 2008 PBR</i>	<i>RATE FROM 2011-12 IN THE 2009 PBR</i>
<i>CLASS 1 EMPLOYEES' NIC (MAIN RATE)</i>	<i>11%</i>	<i>11.5%</i>	<i>12%</i>
<i>CLASS 1 EMPLOYEES' NIC (HIGHER RATE)</i>	<i>1%</i>	<i>1.5%</i>	<i>2%</i>
<i>CLASS 1 EMPLOYERS NIC</i>	<i>12.8%</i>	<i>13.3%</i>	<i>13.8%</i>
<i>GLASS 4 NIC (MAIN RATE)</i>	<i>8%</i>	<i>8.5%</i>	<i>9%</i>
<i>CLASS 4 NIC (HIGHER RATE)</i>	<i>1%</i>	<i>1.5%</i>	<i>2%</i>

This measure will be balanced against an increase of £570 in the "primary threshold" and the "lower profits limit", essentially increasing the level at which taxpayers pay NIC.

Pensions

The Finance Act 2009 introduced the proposal that from 6 April 2011, those individuals with incomes in excess of £150,000 would no longer receive full higher rate tax relief (currently 40%) on their pension contributions. Once income exceeds £180,000 only basic rate relief will be given (currently 20%).

Anti-forestalling rules were also introduced to ensure that individuals with income in excess of £150,000 in any of the tax years 2007-08 to 2010-11 do not simply make large

additional contributions to their pension schemes in advance of the 2011-12 changes. As such, any perceived 'out of character' pension contributions are now subject to a 20% tax charge to the extent that the individual's total pension contributions exceed a special annual allowance of £20,000. A late amendment was made to the legislation to extend the higher rate relief to contributions of up to £30,000 where an individual has historically made irregular contributions.

Until 9 December 2009, an individual with income below the £150,000 ceiling could continue to make any pension contributions they desired (within the pensions framework) and receive full higher rate tax relief.



Unfortunately, this is no longer the case for individuals with incomes of between £130,000 and £150,000 in 2009-10 or 2010-11 who will now be caught by the revised anti-forestalling rules.

The key changes are as follows:

- The £130,000 pre-tax income threshold is calculated before deduction of the individual's own pension contributions and charitable donations but without adding back employer's pension contributions.
- This is compared to the calculation of the £150,000 ceiling which is after adding back employer's contributions.

Apparently the reason for this change is to provide certainty for individuals and to reduce the administrative burden for pension schemes. Only individuals with pre-tax income of £130,000 or more will need to establish the value of pension contributions funded by their employers.

It is important to note that the £150,000 ceiling from 2011-12 restricting the tax relief on pension contributions has not been reduced to £130,000. However, individuals will again only need to determine the level of employer's contributions if their income is equal to or exceeds £130,000 and will only be affected if the sum of their pre-tax income and the employer's contributions is £150,000 or over.

Due to the introduction of the new additional income tax rate of 50% from 6 April 2010 legislation will be introduced to ensure that, where appropriate, only basic rate tax relief of 20% is given.

Cars and vans provided to employees

Electric cars

Legislation will be introduced in the Finance Bill 2010 to set the company car tax charges for solely electric cars provided to employees from 2010-11. The current rules provide for a charge to income tax and National Insurance on the employee and employer based on a specific percentage of the list price.

The specific percentage is currently 9% but will be reduced to 0% for the five fiscal years from 2010-11 to 2014-15.

Electric vans

Currently all employees and directors provided with the private use of a company van pay tax on the benefit based on a scale charge of £3,000. Employers also pay Class 1A National Insurance on this same scale charge.

A new scale charge will apply to the provision of electric vans. This new scale charge will apply for 5 years from 6 April 2010 and is set at nil.

The scale charge will apply only to vans propelled solely by electricity and therefore is likely to be limited in availability.

Company cars – fuel scale charge

Currently all employees and directors provided with free private fuel for company cars or vans pay tax on the benefit based on a scale charge. Employers also pay Class 1A National Insurance on this same scale charge.

The scale charge is currently £16,900 for those with company cars and this will be increased to £18,000 with effect from 6 April 2010.

The scale charge is currently £500 for those with company vans and this will be increased to £550 with effect from 6 April 2010.

Changes to company car tax

Legislation will be introduced in the Finance Bill 2010 to set the company car tax charges for 2012-13. The current rules provide for a charge to income tax and National Insurance on the employee and employer based on a specific percentage of the list price.

The specific percentage depends on the car's emissions. The new rules will introduce a new 10% band and all emissions thresholds will be reduced by 5g/km so that the 10% band will apply to company cars with CO2 emissions up to 99g/km. This will remove the Qualifying Low Emissions Cars category.

Salary sacrifice workplace canteens

From 6 April 2011 the exemption for the benefit of free or subsidised meals will be restricted where an employee has an entitlement to employer-provided free or subsidised meals in conjunction with salary sacrifice or flexible benefits arrangements.

The Enterprise Management Incentive scheme

The Enterprise Management Incentive (EMI) scheme is an unapproved share option scheme which offers capital gains tax treatment instead of income tax treatment on certain share options granted to employees. There are a number of qualification criteria to satisfy, including conditions which apply to the employee, the option itself, and the granting company.

The scheme requires EU State Aid approval and the Treasury has announced that, in order to retain State Aid approval, the conditions which apply to the granting company will be altered. For share options granted on or after 6 April 2010 it will no longer be a condition that the company carries on a trade "wholly or mainly" in the UK. Instead, it will simply be required that the granting company has a permanent establishment in the UK. This will enable employees of non-UK companies to have greater access to the scheme.

It should be noted that, in some circumstances, it would appear that companies which previously were able to grant EMI options will no longer be able to do so. These circumstances appear to be fairly limited and relate to overseas companies with UK trading subsidiaries. We have requested clarification from the Treasury on this matter.

Venture capital schemes

The three venture capital schemes are the Enterprise Incentive Scheme (EIS), the Venture Capital Trust (VCT) scheme and the Corporate Venturing Scheme. All three schemes provide tax incentives for investing in certain trading companies.

The schemes are subject to EU State Aid rules, and in order to continue to qualify for these rules the Treasury has announced that changes will be made to the most popular schemes - EIS and VCT. The draft changes have been published and comments on the draft legislation have been requested.

The draft legislation:

1. Applies a new requirement that to qualify under either scheme a company must not be in difficulty,
2. Replaces the requirement that to qualify under either scheme a company must carry on its qualifying trade wholly or mainly in the UK, with one that the company must have a permanent establishment in the UK,
3. Removes the requirement that a VCT's shares must be included in the official UK List, replacing it with one that their shares must be traded on an EU regulated market, and,
4. Changes the rules governing the amount of a VCT's investment that must be held as equity.

The definition of a company "in difficulty" is drawn from an EU document and is extremely vague. Should the legislation be enacted in its current form guidance will be needed as to how this will apply to growing

companies which may be loss making and require additional finance in order to become profitable.

In addition, the consultation document proposes technical changes to the rules which govern the size of the companies which can qualify for the scheme, although in practical terms the difference is likely to be the substitution of the old "gross assets" limits of £7million before and £8million after the issue, with a limit of €0million which applies after the share issue and continues to apply in the three years following the issue if certain restructuring events occur.

One final point, also announced in the 2009 Pre-Budget Report, is that HMRC has changed its view as to whether companies whose trade is carried on in partnership can qualify for EIS or VCT. They now consider that such arrangements will not qualify.

FOCUS ON JUNIOR MARKETS

Our previous edition of *Business Update* carried an article looking at the worldwide slowdown in corporate finance activity. Here, we look at the knock-on effects the slowdown has had on the UK's AIM and PLUS markets, which have become increasingly important in recent years to small and medium-sized companies as a means of raising both growth capital and profile.

Prior to the collapse in market confidence that marked the final months of 2008, the expansion of the AIM market stood out as one of the business growth stories of recent years, while its smaller rival, PLUS Markets (formerly Ofex) was also making progress in increasing both its profile and the number and quality of stocks on its books.

Both stock markets offer companies the facility to raise funds and also offer investors the chance to participate in their growth plans. The attractions of admission to public markets, of course, go beyond simply the ability to raise finance, and despite the dire economic conditions of 2008/09, remain very relevant. These include the heightened profile of listed firms, the liquidity that comes from having shares traded on a public market, the ability to finance M&A activity by using paper as currency and the ability to realise value on exit.

For companies, AIM and PLUS markets offer the chance to 'go public' with lower costs (generally) and the lesser regulatory burdens associated with London's main market, as well as other major international markets. Consequently, recent years have seen substantial growth in this area,

especially in the number of companies being traded on AIM: from 118 at the end of 1995, to almost 400 at the end of the decade and 1,347, by the close of 2007.

But, the period since the end of 2007 has been one of slowdown and a dearth of listings, as the stresses of the banking system became starkly apparent during 2008. Against a seemingly unfavourable backdrop, what has been the impact of the slowdown and what is 2010 likely to bring for both AIM and PLUS Markets?

AIM: a dearth of admissions

The most obvious way in which stock markets have been affected over the last twelve months is in the number of admissions. The AIM figures for the first 10 months of 2009 show that only 24 companies came to market during this period, compared to 99 at

the same point last year (there were 114 admissions in total during 2008). This compares with 519, 462 and 284 AIM admissions respectively in the preceding three years, which shows just how adversely market admissions have been affected.

This marks a radically different environment to that enjoyed by AIM in previous years and one in which there has clearly been a reassessment of risk by investors.

On one hand, investors are now undoubtedly more conscious of AIM's higher risk profile than was previously the case, and are looking for greater certainty on returns.

With less investor cash available – particularly for opportunities that by their very nature carry a degree of risk – it is proving more difficult for management teams and their brokers to market their prospective AIM admissions to investors.

But on the other hand, there is also a higher degree of reluctance on the part of owners to subject their companies to lower admission valuations. The appetite of institutional investors, of course, controls pricing and sometimes it is better to wait before listing, in order to get a better valuation. Many prospective AIM entrants have not necessarily 'gone away' – rather, we consider that many are beginning to 'queue-up' and wait for more favourable investor sentiment to return. When the overall economy improves, the hope is that this admission pipeline will become 'unblocked'.

De-listings

Almost 300 companies have, over the past 18 months, de-listed from AIM, with their managements looking to reshape and manage their business away from the scrutiny and pressure of the public markets.

We are aware of situations where management are assessing the benefits of de-listing, but we feel the rate of

'take-privates' will probably slow in coming months as market confidence gradually returns, and investors look to hang onto value, rather than to let companies go private.

Secondary fundraisings

If the IPO market is in the doldrums, more encouraging signs can be seen on AIM in terms of the amount of money raised by its existing companies. To date in 2009, further fundraisings have raised £3.64billion – more than six times the £579million raised through new admissions.

This represents the third highest amount of money raised through 'secondaries' in any one year in AIM's history and can be seen as proof that an appetite remains for those companies that have survived the crises of the past 12 months, proved themselves on the market and which are therefore probably perceived as carrying less risk.

Similarly, the amount of money raised through secondary listings on PLUS Markets rose month-on-month during the second half of 2009. Reputation and the perception of 'quality' continues to be of paramount importance.

The PLUS picture

Whilst also showing a degree of admission shrinkage, the picture for PLUS Markets admissions is less stark than its AIM counterpart – the

market had seen 15 admissions by the end of October 2009, compared to 33 and 39 in the previous two years respectively, therefore there has been a proportionally smaller drop in listings compared to AIM. PLUS has also suffered fewer failed companies and de-listings in the past 18 months, although, with just short of 200 stocks, it is still a much smaller market.

It is possible that PLUS will benefit in the long-term from the adverse conditions that have affected AIM. With the highest proportion of AIM companies now having a market capitalisation of between £10million and £25million, many smaller business managers, for which AIM might have formerly seemed a natural destination, are now inclined to look more favourably on PLUS.

This is partially because the costs associated with admission and ongoing reporting are smaller than AIM, and so in some respects it is becoming more of a natural home for earlier-stage ventures, particularly those with a market capitalisations, on admission, of up to £5million.

Indeed, our corporate finance team is currently working with a number of clients in this bracket on their potential PLUS market entries, despite the less-than-ideal economic conditions currently prevailing. We hope to be able to tell you more about these in coming months.



COMPANY TAX RETURN FILING – IMPORTANT CHANGES COMING UP

It is still possible to file a company tax return in paper form, but HMRC has announced that it will require online filing of these returns from 1 April 2011, for any accounting period ending after 31 March 2010.

HMRC already provides free Corporation Tax Online filing software for companies and organisations with straightforward affairs. There are also HMRC-tested commercial software options. The HMRC website contains a lot of information about submitting a company tax return – see <http://www.hmrc.gov.uk/ct/managing/company-tax-return/returns/submit.htm>

Hidden effect

This change to require online filing would not appear to be too controversial.

However, there is a hidden effect which may cause some difficulty without appropriate forward planning.

From 1 April 2011, as above, the online filing of the company tax return – a term which includes the CT600, tax computations and the company accounts - must be made using a format known as iXBRL.

This format is designed to be read by both humans and machines, and thus offers efficient data gathering and manipulation opportunities for HMRC.

The hidden issue here is the filing of the company accounts.

Many companies use commercial software for the preparation of their accounts. The software providers appear to be making the necessary programming changes such that commercial software will be able to

provide accounts in the iXBRL format without significant manual input.

However, many companies produce their accounts in Word or Excel. Software is beginning to appear which can help convert these documents, but the conversion process will involve manual input at some stage. Each line and paragraph in the accounts has to be separately identified with a 'name-tag' before conversion into iXBRL format. There is a prescribed list of 'name-tags' to be used which contains thousands of items depending on whether accounts are reported under IFRS or UK GAAP.

This exercise would in large part be a one-off with maybe minor tweaks required on an annual basis. Whilst this would be an annoying extra step in the company tax return filing process, it might not appear too much of a barrier for a single set of small company accounts. However, it will be progressively more time-consuming for larger companies. For groups, each set of accounts supporting a company tax return will need to be converted. Clearly there are costs associated with meeting this requirement, both in terms of purchasing suitable software and in time.

If your company prepares its accounts in Word or Excel, it is advisable to start thinking about how you might be able to convert them into iXBRL and whether it is an appropriate time to consider using commercial software for your accounts preparation.

Companies House has announced it will be accepting unaudited accounts filed in the iXBRL format from Summer 2010 and all accounts a year later. It would therefore seem likely that in due course filing in this format will become a Companies House requirement as well.

Buying some time

The impact of HMRC's filing requirement could be delayed by a year by filing the company tax return early. For example, for the year ending 30 April 2010 if the return is filed a little early and before 1 April 2011, it will be possible to file under the current rules.

Accounts prepared by Saffery Champness

We are investigating the various options currently available for converting all formats of accounts into iXBRL and will continue to monitor developments. We will update clients directly in due course.



CHANGES TO COMPANIES HOUSE - FILING PROCEDURES NOW IN EFFECT

The rules on authentication and delivery of documents to the Registrar of Companies have changed, as of 1 October 2009.

In summary

All accounts (company and LLP) filed at Companies House since 1 October 2009 must now show the company name and registered number on one of the following:

- The balance sheet (this is the preferred option)
- The directors' report
- The directors' remuneration report (DRR); or
- The audit report.

Signatures in the accounts must be in black ink. This is required so that when the accounts are scanned in, a good quality image is obtained of signatures.

It should be noted that filed accounts must comply with the new requirements, otherwise they will not be considered as having been properly delivered.

Common questions answered for accounts filed from 1 October 2009

What documents now require a signature?

This depends on whether the accounts filed are prepared under the Companies Act 1985 or Companies Act 2006.

Companies Act 1985 accounts for filing should be signed as before, by the directors on the directors' report, DRR if applicable and balance sheet.

Companies Act 2006 accounts for filing only require a signature on the balance sheet of one director, which must be in black ink, as above. The filed directors' report and DRR do not require a signature, although as usual, they must be signed in the full set of accounts prepared for the members.

Where should I enter the company registration number?

The recommended location for the company registration number is the balance sheet as this is always filed irrespective of the size or classification of the company. In order to satisfy the 'prominent' position requirement, it is suggested that this be disclosed below the signature of the director as Company Registration No. 123456.

However, entities which cannot take advantage of abbreviated filing might prefer to include the company number on the directors' report or audit report. It must be given suitable prominence, so a position alongside the company name might be appropriate.

My accounts are currently in progress – what steps are now needed to comply with the new filing requirements?

If the directors have already signed the accounts, the company name and number may need to be added to the balance sheet – this can be typed or handwritten but must be added in black ink.

If the signatures are not in black ink, they may need to be redone. If there are practical difficulties in getting accounts re-signed in black ink and meeting a filing deadline (eg accounts sent overseas for signature), representation could be made to Companies House requesting a concession.

Note that it does not matter if there are more signatures on the accounts for filing than are required, but – again – they do need to be in black ink.

Re-filing rejected documents

Note that the concession permitting 14 days to re-file rejected documents (for example, illegible accounts) is no longer available for documents filed after 1 October 2009, and so companies therefore no longer have 14 days from the date of the rejection letter in which to amend and return accounts in an acceptable format without incurring penalties.

Finally, it should be noted that this is just a summary of the new Companies House filing requirements. More details are set out in the Registrar's Rules on the Companies House website: <http://www.companieshouse.gov.uk>

Looking ahead

Online filing for company accounts is on the horizon; the new rules regarding authentication of filed accounts anticipate the day when filed accounts will be authenticated using alternative means to a manuscript signature. We will keep you up-to-date on developments in future issues of Business Update.

VAT – ONLINE FILING AND PAYMENT

From 1 April 2010 every VAT registered business with turnover in excess of £100,000 at 31 December 2009 (excluding VAT), and all newly registered businesses regardless of turnover, will be obliged to file their VAT returns (including nil and repayment returns) electronically, and pay tax electronically.

For those coming to online filing for the first time a number of practical issues arise. The business must be set up to use the facility (or must appoint an agent to do it for it). There must also be an electronic bank facility. The risk management implications for the preparation, checking and submission of the return, and also the authorisation of payment need to be considered.

Setting up on the system is fairly straightforward. Simply go to www.hmrc.gov.uk and click on online services. Click on the link to 'register and enrol' and follow the on-screen instructions. You will need your VAT registration number, your postcode, your effective date of registration, the final month of the last VAT return you submitted, and the 'Box 5' figure (i.e. the payment due) from your last return.

Once enrolled, you can use the system immediately to submit returns, but for other services (such as submitting sales lists) you will need to await an activation code. The ID and password needed to access the system in future will be created during the setup process. You will also store five "secret" pieces of information that will help identify you when necessary. You should keep all this information confidential to the persons who need to use it, but you may also wish to make provision for making it available to others in the event of sickness etc, or to keep a copy off-site for backup. You can change this information, and

you may also think it worth while to do so on a regular basis, and/or if a key member of staff leaves.

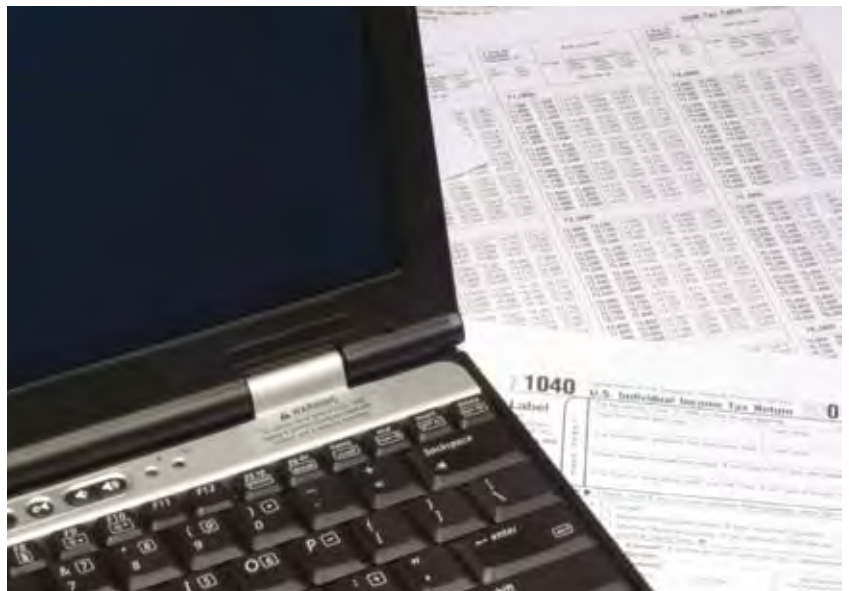
If you decide to appoint an agent such as Saffery Champness you will need to go online to the HMRC website and set up in the normal way. You must then (currently) log on to the Government Gateway website at www.gateway.gov.uk using the ID and password obtained on the HMRC website. Once logged on, go to Manage Services where you can appoint the agent using their authorisation code. Your agent can then (on the HMRC website) submit returns on your behalf and perform other tasks.

As noted earlier, electronic payment will be mandatory. There are many methods, including Direct Debit, Standing Order, Internet banking, CHAPS, BACS or credit or debit cards. Most forms of electronic payment give the taxpayer an extra 7 days in which to submit his return. In the case of Direct Debit, 10 extra days are given. Allow sufficient time to set up the necessary arrangements before using the system for the first time.

Online filing is still evolving, and we will undoubtedly see improved functionality over the coming months and years. It is confusing to have the appointment of agents done on a different website, for example. Also, at present it is not possible to "save" a partly completed return and return to complete it later, and the facility to print out copies of the returns seems hit or miss. It may well be that some of these matters will be dealt with before compulsory online filing begins.

Some accounting software packages which are 'XML enabled' can submit returns instantly and directly to HMRC, avoiding re-keying the summary data on the on-screen return form. Further information, including recommended software, can be found on the HMRC website.

Compulsory online filing will be a bit more of a shock to some businesses than to others. Most problems can be avoided, however, by a little consideration of the issues mentioned above. We suggest that in most cases it will be best not to wait until April but to migrate to electronic filing of VAT returns at the next available opportunity.



VAT - OPTION TO TAX

In May 2009 Information Sheet 6/09 announced that two important concessions are to be withdrawn on 30 April 2010. The effect will be to curtail the reclaim of input tax relating to property developments, and it is likely that smaller projects, and therefore smaller businesses, will be hit hardest.

These concessions cover two situations. VAT can be incurred by registered persons prior to opting, and can also be incurred by unregistered persons who subsequently opt and register. One also has to distinguish projects that qualify under the Capital Goods Scheme. (The CGS applies to land or buildings costing over £250,000). The operation of the usual pre-registration rules can give rise to inequitable treatment compared to registered persons. By concession,

HMRC allow recovery of input tax on costs incurred prior to registration if they are attributable to taxable supplies made after registration. At present the CGS does not apply to capital items acquired prior to registration, but it is expected that legislation will be introduced to deal with that situation, and until then the concession will be retained. However, the concession will be withdrawn for non-CGS items. Smaller projects will therefore lose out, which is likely to hit smaller businesses disproportionately hard.

For registered persons, the CGS will again cater for larger projects. For refurbishments or extensions costing less than £250,000 the partial exemption 'payback' rules might apply. This provides for a VAT reclaim

in circumstances where you originally intend to make an exempt supply - and therefore don't reclaim the VAT - but, before making that exempt supply, you form an intention to make a taxable supply instead. There is a 6-year time limit. Where those rules do not apply, HMRC operate a concession to allow recovery. That is to be withdrawn. The effect will be to reduce the ability of registered persons to reclaim VAT on smaller capital projects, while also leaving a potential inequality of treatment between registered and unregistered persons because of the 6-year rule.

The combined effect of these changes will mean that some people will lose out by not opting to tax or registering early enough in future.

09

VAT - PLACE OF SUPPLY OF SERVICES - NEW RULES

1 January 2010 saw the introduction of new place of supply of services rules.

The place of supply (PoS) rules determine the country in which a supply is subject to VAT and the identity of the person who should pay the tax. The aims of the new rules are modernisation of the VAT regime and simplification.

For some services, the new rules are little changed from the old position. In other cases, there has been a significant change. However, many businesses experiencing little change to the treatment of their supplies still face more compliance in the form of the Sales List (see below).

The new regime features two general rules and a series of exceptions to those general rules. The appropriate general rule will always apply if one of the exceptions does not apply.

Despite the aim of simplification, it is anticipated that it will still be difficult to decide the correct heading under which many services should fall.

The new general rules

For Business to Business (B2B) supplies, the general rule is that the PoS is where the customer is established. For Business to Customer (B2C) supplies, the general rule is that the PoS is where the supplier is established.

Amongst the services which fall under the general rule are those often called the "intangible" services such as consultancy, advertising, copyright and other similar rights, legal services, accountancy and the provision of information. Telecoms and broadcasting also fall within this heading.

Management services now often fall within the new general rules. Consequently, many such services

which were standard rated previously no longer require the supplier to charge VAT when the customer is outside the UK.

The exceptions to the general rules

The following are the main categories of exception, each with its own specific PoS rule.

Property transactions: as before, the PoS in all cases is where the property is located. This includes interests in land, building services, estate agents, surveyors and hotel accommodation.

Intermediaries: where the intermediary's customer is not a business, the PoS is still where the supply arranged by an intermediary is supplied. For B2B supplies, the general rule now applies and this represents an important change from the old position.

Passenger transport: as previously, the PoS in all cases is where the transport takes place.

Cultural, sporting, educational, entertainment, artistic and other similar services – in all cases, the PoS continues for the time being to be where the service is actually performed. But this treatment will change in January 2011 when most of these services, when supplied to another business, will fall within the new general rule.

Use and enjoyment

In some cases, the place of supply rule can be overridden by the use and enjoyment rules. These rules are optional but allow member states at their discretion to relieve certain services, which would otherwise be subject to VAT, if the effective use and enjoyment of the service is outside of the EU. Equally, the rules allow a member state to tax certain services if the use of the service is within the

country in question but the PoS rules would otherwise mean that the service was free of VAT.

Accounting for VAT

It is the supplier's responsibility to identify the correct PoS and to take action to ensure that VAT is charged whenever required. This may require the supplier to obtain a VAT registration in another member state.

However, for B2B services falling within the new general rule, help is at hand in the form of the reverse charge. Where the supplier and customer are in the same member state, the supplier should charge VAT but, where they are in different member states, the supplier should charge no VAT and the business customer will account for the VAT in his own member state using the reverse charge procedure. If the customer is outside the EU, the supplier similarly should charge no VAT; there may be a local VAT charge

in these circumstances but this depends on local rules and varies from country to country. If the supplier is outside the EU but the business customer is within the EU, the customer needs to apply the reverse charge in his own state.

A form of the reverse charge may also be available for B2B supplies falling outside the general rule but the position in this respect varies.

EC Sales List

There is a new requirement on all suppliers of services falling within the new general rule, to the extent those services are supplied to VAT registered customers in another member state, to complete a sales list very similar to that already required of those selling goods to other member states. The sales list indicates the VAT number of each customer to whom relevant services are supplied and the value of such services to each customer in the period covered.

DIRECTORS – MORE PRIVACY?

The Companies Act 2006 (since 1 October 2009 now fully implemented) has introduced the following changes for directors all of which are now in force:

Addresses on public record

Directors are now able to keep details of their home addresses out of the public domain. From 1 October 2009 the Companies Act 2006 provides for directors to submit a service address to the Registrar for the public record. Companies will need to keep a register of directors' residential addresses which they must disclose to Companies House. This information will in general be kept private.

In choosing a service address directors must ensure it is capable of receiving post – it cannot therefore be a PO Box Number or similar. It is worth considering using the business's own trading address if appropriate or possibly the registered office address.

Directors may wish to be able to readily access post sent using Companies House details or to get it forwarded from the service address; all of these points need to be taken into account in the choice of a suitable address.

Disclosure of other directorships

It is no longer required for the company's register of directors to include details of other directorships and nor does this information have to be sent to Companies House.

Disclosure of shareholdings

This has been in force for a few years now (reflecting the extraordinarily long birth of this Companies Act) but might be worth a reminder. Private companies do not have to keep a register of directors' interests any more and as a consequence of this, and since April 2007, it has not been necessary for the annual accounts to disclose the directors' interest in shares of the company, including any held by family members.

INFORMATION REQUEST POWERS - HMRC'S GROWING TEETH

Substantial new powers to obtain information on a taxpayer now exist for HM Revenue & Customs (HMRC) under Finance Act 2008. These powers are intended to improve the effectiveness of discovering and combating non-compliance for all taxes.

The new framework introduced a common compliance checking structure that applies to Income Tax, Capital Gains Tax, Corporation Tax, VAT, PAYE, National Insurance and the Construction Industry Scheme from 1 April 2009, and other taxes such as Inheritance Tax and Stamp Duty Land Tax from 13 August 2009.

Whilst these powers have now existed for some time, it is only in the last few months that the extent of HMRC's intention to use them has become apparent. If they have reason to believe there is something

wrong, HMRC is now able to issue a Taxpayer Notice (TN), which requires a taxpayer to provide information or produce a document without the opening of an official enquiry into the taxpayer's affairs, as was previously the case. The TN does not need to be issued for determining whether a return is incomplete but merely for the purpose of "checking the taxpayer's tax position". This therefore allows HMRC to inspect records both before a return is filed, and after the "enquiry window" (generally one year after the relevant tax return has been filed) has closed. HMRC is now also able to obtain information or documents from third parties, through a Third Party Notice (TPN). "Information", in these contexts, covers explanations and the creation of schedules and documents that do not already exist and so there may

be additional resource burdens on tax payers who find themselves to be subject to these checks.

Although HMRC has previously had to allow at least 30 days for the production of information, this requirement has now been removed, and so HMRC is effectively free to impose whatever ("reasonable") deadline it wishes.

HMRC has always been able to request documentation from both the taxpayer and third parties but now information can be requested that may put both the taxpayer and any third parties in a difficult situation as to what information should reasonably be supplied. If these Information Notices are received from HMRC, do check that they have sufficient authority for the request and obtain advice before providing any documentation or information.



EMPLOYER FINANCED UNAPPROVED RETIREMENT BENEFIT SCHEMES (EFURBS)

12

With the imminent introduction of the 50% top band of income tax and the restriction of higher rate tax relief on contributions to pension schemes, high earners and senior executives, as well as their employers, will want to consider alternative ways of reducing the immediate tax deductions on earnings and bonuses, as well as promoting saving for retirement in an effective manner. An attractive option which provides an effective tax deferral whilst providing flexible pension provision is an Employer Financed Unapproved Retirement Benefit Scheme (EFURBS).

Previously called unapproved pension schemes, or Funded Unapproved Retirement Benefit Schemes (FURBS), these are occupational schemes that build up retirement benefits in excess of those allowed under approved pension schemes. Such schemes do not receive the tax reliefs available to approved pension schemes.

An EFURBS is a discretionary trust created by an employer, typically in an offshore jurisdiction to provide retirement and death benefits for an individual and their family. They are usually bespoke arrangements set up for just one executive and their family although multi-member schemes could be set up.

The EFURBS is usually funded at the outset by funds being placed into it by the employer, and this could be part of the agreed pension strategy or as part of a salary sacrifice agreement as contributions direct from the employee are not permitted. Unfunded arrangements are possible and in this situation the employer simply undertakes to provide funds at some stage in the future.

The Benefits of EFURBS

The benefits of using an EFURBS include:

- For employers, it provides an

effective mechanism to incentivise and retain staff.

- Unlike contributions into registered pension plans, contributions into an EFURBS are not subject to income tax, irrespective of the amount of the contribution or the level of the executive's income.
- There are no National Insurance contributions (NIC) on contributions into an EFURBS.
- The EFURBS is outside the annual and lifetime allowance limits that apply to regulated pensions, so allowing benefits to build up in a tax neutral environment without being subject to the 55% penal tax charge.
- An EFURBS is completely flexible as none of the registered pension scheme restrictions apply and there is no limitation on investment classes available.
- It may be possible for EFURBS funds to be loaned to the employee on commercial terms and there is no requirement to buy an annuity. There is no specific retirement age (although after 6 April 2010, benefits can be taken only from age 55 onwards).
- An offshore EFURBS is not subject to capital gains tax or income tax on foreign source income allowing investments within the EFURBS to roll up tax free.
- EFURBS can invest in residential property, requested shares (including the employer's company) i.e. assets that approved pensions scheme cannot invest in.
- Pensions and lump sums from the EFURBS will generally be subject

to income tax at the employee's marginal rate in the year that benefits are drawn. Payments received by an entity which is not an individual are taxed at 40%, increasing to 50% from 6 April 2010. However, depending on the employee's residence position at the time of distribution, it may be possible for these to be taken free of UK income tax. This would need to be examined on a case-by-case basis.

- There will be no NIC on a lump sum payment from the EFURBS provided that it does not exceed 25 per cent of the value of the fund. Neither will there be NIC on pensions from the EFURBS provided that they are paid before the executive reaches age 75 and his or her employment has ceased.
- Assets within the EFURBS are ring fenced from claims by creditors in the event of the employer's insolvency.

Although the above benefits apply, there is no corporation tax deduction for the employer until the benefits are drawn from the EFURBS. However, in the current economic climate, the corporation tax deduction may not be of primary importance.

From an inheritance tax perspective normally the creation of a discretionary trust by an individual will incur an inheritance tax liability at the rate of 20%, and this applies also where the funds are transferred in by a close company (in which event the transfer is apportioned to the participators (i.e. broadly the shareholders) and liability arises on them).

A transfer to an EFURBS is however an exempt transfer for inheritance tax purposes unless the EFURBS is not

being operated as a genuine retirement benefit scheme, in which case HMRC may well seek to impose an inheritance tax liability on the participators for the funds transferred in. There is no general six-year limitation period for past inheritance tax liability, and HMRC can seek to enforce an inheritance tax charge for a date long before six years previous. HMRC has stated that it may also seek to treat the trust as a settlor-interested trust, with income tax liability on the company directors,

presumably on the basis that the directors have allowed their earnings to be diverted into the trust of which they are indirectly the settlors. The trust might also be caught by the inheritance tax gift with reservation provisions, although there are arguments against this treatment. On the basis that the EFURBS is structured and operated correctly as a genuine retirement benefits scheme it should however be possible to avoid any UK inheritance tax charges.

In conclusion, the EFURBS may be considered a suitable tool in terms of retirement planning for UK residents in an increasingly punitive personal tax environment.

Specific advice should always be taken prior to implementing any retirement planning according to individual circumstances.

THE UK TAX NET TIGHTENS - LAERSTATE BV (TC162)

13

A company will be resident in the UK for tax purposes if it is incorporated here, but also a foreign incorporated company will be resident in the UK if it is managed and controlled here. This is often a key issue in international corporate tax planning and so the meaning of “management and control” is carefully scrutinised.

UK-based shareholders may seek to influence the directors of companies based outside the UK tax net, and the extent to which this influence can be exerted without bringing the worldwide profits of the company within the ambit of UK corporation tax is the subject of close attention by HMRC.

Until recently the relevant case on this subject was *Wood v Holden* (2006), where the taxpayer was victorious at the Court of Appeal. The effect of this case, very broadly, is that it is acceptable for the directors of an overseas company to fall in with an overall plan which was designed by equity shareholders in the UK, so long as the overseas company directors exercise (and are seen to exercise) careful consideration of the merits and disadvantages of the plan, and that it is those overseas directors who have the final say as to whether the overseas company takes part.

However, HMRC has been seeking to win a case of its own on this subject, and has now done so with the First Tier Tribunal win in the case of *Laerstate BV*.

The *Laerstate* case is arguably of limited use for HMRC as it has a number of factors which are unusual. For example, one director of that company had the power to bind the company on his own, even against the express wishes of the other director, and that powerful director was resident in the UK. Nevertheless, there are points to take away, including the major issue that the Tribunal decided; that despite the fact that the board meetings of the company took place outside the UK, the company was not run by the directors at its board meetings. Instead it was found that the UK resident director took all the decisions himself outside of the board meetings. In addition, the Tribunal was relatively uninterested in the location in which documents were signed – a point which had previously been thought to have been of some importance – preferring to concentrate on where the decision to sign was taken.

There are a number of lessons to be learned from the *Laerstate* case, but the common thread among them is one which will be familiar to those who prepare accounts, the principle of “substance over form”. This means

that the way that things actually happen is much more important than the way that they are supposed to happen. In our experience the factor that most often undermines tax planning in this area is that the legal structures and protections put in place at the planning stage are not adhered to in practice, and the *Laerstate* case provides an example of the way that this can go wrong.



PREPARING FOR THE 50% TAX RATE

Many advisers to private clients have published their thoughts on what can be done by individuals in the face of the 50% tax rate that is due to come in from 6 April 2010, on incomes over £150,000.

Our own technical brief on this topic, prepared before the

Pre-Budget Report, can be viewed on our website, www.saffery.com. With the obvious exception of Bank Payroll Tax little has been done to prevent planning in this area.

There can be no doubt now that the 50% rate is going to become a reality, regardless of which political party is

in power after the General Election in the Spring, and it seems likely that the rate will remain for some years at least. To find out how we can help to minimise its impact for you and your family, please contact your usual Saffery Champness partner.

14



SEEN TO BE GREEN!

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