



NIXON WILLIAMS

NEWSLETTER

SPRING 2008

ARE YOU FEELING CHARITABLE?

When taxpayers make a donation to charity through the Gift Aid scheme, the donation is treated as being made net of basic rate tax, currently 22%. The charity can reclaim this tax. If the donor is a higher rate taxpayer, they may be able to claim additional tax relief.

So, if a taxpayer decides to make a donation of £78, the charity can currently reclaim tax of £22. If you are a higher rate taxpayer, you may be entitled to a further £18 tax relief, making the net cost of donating £60.

Gift Aid in 2008/09

The basic rate of tax is to be reduced to 20% for 2008/09. One of the consequences of this will be a reduction in the amount of tax relief a charity can reclaim on Gift Aid donations.

So, if a taxpayer decides to make a donation of £78 in 2008/09, the charity will only be able to reclaim £19.50. If you are a higher rate taxpayer, you may be entitled to a further £19.50 tax relief, making the net cost of donating £58.50.

So for a taxpayer it may be worthwhile making donations before the end of the tax year to maximise the value of the gift to the charity. Going forward into next year, taxpayers may want to increase their donations so that charities don't lose out.

WILL YOU BE 'INCOME SHIFTING'?

You will no doubt remember the Arctic Systems case which has been much talked about. The case involved a husband and wife who owned a company 50/50 and, broadly, took the profits out by way of dividends. HMRC had attempted to tax the dividends solely on the husband, as he was performing most of the work which generated the profits of Arctic Systems.

Following HMRC's defeat in this case last year, the government announced in the Pre-Budget Report that they would legislate against similar situations which they regard as 'income shifting'. Draft legislation has now been published to prevent what the government believe is a tax advantage being gained through income shifting.

This legislation will apply from 6 April 2008 to:

- company distributions, usually dividends, and
- profits from a partnership.

It is broadly designed to address similar situations to that found in the Arctic Systems case, where one spouse or civil partner generates most of the business profits but the other receives a proportion of the profit and the couple save tax into the bargain!

Rules catch more situations

The proposed legislation is rather wider than was anticipated as it refers to an individual who shifts income to another individual. In order for a situation to be caught by the legislation three other conditions have to apply:

- the individual who is shifting income is party to an arrangement or understanding, or can control or influence such an arrangement or understanding
- that individual forgoes income (directly or indirectly), as it has been shifted to the other individual, and

- the individual who is shifting the income has the power to control or influence the amount of the income shifted.

If these conditions are met, the individual who has shifted the income will pay the tax and any national insurance due on the income shifted.

The legislation will not apply to genuine commercial arrangements or situations where, even though income has been shifted, there is no tax advantage gained.

The proposed rules are very widely drafted and may catch many owner-managed businesses involving husbands, wives and other family members, as well as businesses run by non-family members, leaving many with a substantially higher tax bill.

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



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CIMA

COMPANIES ACT 2006 - WHERE ARE WE NOW?

It was as far back as November 2006 when the new Companies Act 2006 (the Act) received Royal Assent. Early in 2007 the government outlined a timetable for the Act's implementation and at that time three key dates were announced:

- 1 October 2007
- 6 April 2008
- 1 October 2008.

In November 2007 the government made a further announcement that the final implementation date would be delayed until October 2009 and a final timetable has since been published.

A number of the new Act's provisions will however continue to be implemented with effect from 1 October 2008. These include the lifting of restrictions that mean private companies cannot give financial assistance for the purchase of their own shares without going through a formal 'whitewash' procedure.

Broadly speaking the sections of the new Act that deal with company formation and particulars will now not come into force until 1 October 2009. The reason given is that the necessary changes to the systems and processes at Companies House may not be completed in time.

What's next?

The next key implementation date is 6 April 2008 when provisions relating to company reports, accounts and audits will be introduced. These provisions will generally apply to accounting periods that begin on or after 6 April 2008. The biggest change for small companies is that the post of Company Secretary will be optional from 6 April 2008. Your current Company Secretary may resign from that date, although all the forms and registration documents they may currently deal with will still need to be completed and filed.

The filing deadline for private company accounts will be reduced from ten to nine months. Again, at the time of going to print, higher penalties for the late filing of accounts are also proposed. The range of penalties is expected to extend between £150 and £7,500 (currently £100 to £5,000).

We will have more detail on these and other changes in future editions.



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EMPLOYMENT LAW CHANGES AHEAD

A new Employment Bill will, if enacted, impose tougher penalties on employers. The overall effect of the Employment Bill will be to strengthen and clarify key aspects of employment law. The Bill had its first reading last December and should receive Royal Assent by summer 2008. The legislation will probably not be implemented until October 2008 at the earliest.

The proposed legislation would:

- increase the fines paid by businesses not paying workers the National Minimum Wage and for certain offences, make employers potentially subject to trial in the crown courts
- make changes to the employment tribunal system.

The Bill also contains provisions on dispute resolution. The Bill aims to repeal the current complex statutory procedures which are a regulatory burden on employers. These are to be replaced with a package of measures to encourage early and informal resolution. It is proposed that these measures will not take effect until April 2009.

We will keep you informed of developments.

SURELY ACQUIRING NEW SKILLS MUST BE TAX DEDUCTIBLE?

Employees who want to further their careers may need to develop new skills by means of some additional training. The tax treatment of these costs depends on how they are paid for and how relevant they are to the job.

DO YOU PAY FOR TRAINING FOR YOUR EMPLOYEES?

If you do then these are tax deductible for your business. Generally your employees are not taxed on the value of the training, providing it relates to their current role or to some activity they may have to perform as part of their job.

WHAT IF EMPLOYEES PAY FOR THE TRAINING THEMSELVES?

The same does not apply in this case. Unfortunately an employee cannot claim a tax relief for training costs unless the training was actually carried out in the performance of their job, as opposed to preparing them to do the job. So it is highly unlikely that an employee who pays training costs personally will obtain any tax relief for the costs.

SALARY SACRIFICE

An alternative would be to agree with the employee, in advance of them undertaking the training, for the employer to pay for the training and the employee to reduce their salary to compensate.

	Pre-salary sacrifice £	Post salary sacrifice £
Salary	20,000	18,500
Training costs paid	1,500	1,500
Employer's NI at 12.8%	1,891	1,699
Employee's NI at 11%	1,625	1,460
Employee's tax saved	-	330
Total employer cost	21,891	21,699

As you can see from the above comparison both the employer and employee are better off after the salary sacrifice due to the tax and National Insurance (NI) savings.

It is vital that salary sacrifice arrangements are implemented correctly. Please contact us if you would like to discuss this further.



CLAIM YOUR IHT RELIEF

Chancellor Alistair Darling announced in the Pre-Budget Report a change to the way in which the inheritance tax (IHT) nil rate band of £300,000 can be used for married couples and civil partners.

Before the introduction of this change, where an individual died and left some or all of their property to their spouse or civil partner, then that transfer was exempt from IHT. However, on the death of the second spouse or civil partner, only one nil rate band was available, meaning that a nil rate band had been effectively wasted. This is because of the IHT exemption for transfers between spouses or civil partners.

The Pre-Budget change means that the proportion of any nil rate band unused on the first death may be used when the surviving spouse or civil partner dies. In order to agree the amount of nil rate band available it is important to establish the value of the estate on the first death.

Backdated change

This change is effectively backdated for situations where a spouse or civil partner died before the announcement of the change, as long as the 'surviving' spouse or civil partner dies on or after 9 October 2007.

Procedures in place but no formal agreement

HMRC have now issued the relevant form and details of the procedure and information required to support the claim but have confirmed that they will be unable to settle any cases until the proposed changes have become law in the Finance Act, probably in July 2008.

Please contact us if you have any queries on this issue.

AND FINALLY.....

This is my regular spot where I will deal with a question from a client.

Q As we near the end of the tax year, I want to ensure that I do not pay any higher rate tax this year. What can I do?

A This is a common question especially at this time of year! For the current tax year ending 5th April 2008, the higher rate band is £34,600 - added to this is the usual personal allowance of £5,225 making a total of £39,825 that you can receive before higher rate tax is paid.

Remember for this exercise you need to account for gross dividends, not simply the net dividend you have received from your company.

So, if so far in this tax year you have been paid £18,000 in dividends this equates to £20,000 gross including the 10% tax credit (to calculate the gross dividend, divide the net dividend by 0.9)

Assuming that the gross salary for the tax year will be £12,000, this makes a total gross income of £32,000 (£20,000 dividends plus £12,000 salary).

In 2007/08 you will not pay higher rate tax until your income exceeds £39,825, so in this example you have a "spare" £7,825. If this was taken as dividends you could have a dividend of £7,042 being the gross dividend less the 10% tax credit.

Any dividends paid in excess of the higher rate threshold will be taxed at 22.5% of the gross dividend (this is the same as 25% of the net dividend).

So, if you decided to declare a net dividend of say, £9,000 (£10,000 gross), you would exceed the threshold by £2,175 - the extra personal tax would therefore be 22.5% x £2,175 = £489.

Although it is clearly an incentive to restrict dividends so that you do not pay extra tax, note that you may be able to utilise this money by paying off debts etc, and leaving funds in the company is gambling that future taxes will not rise!

I hope this helps.

Alan Williams



FUEL BENEFIT RISE

Do you drive a company car or have employees who do? If so then you need to be aware of some significant changes to the benefit in kind rules.

Background

Where a director, or an employee, is taxable on a company car, then if fuel is provided as well as the car, there is an additional benefit.

The car fuel benefit is linked to the level of the car's CO₂ emissions. The CO₂ emission percentages that apply in determining the company car benefit are used in the car fuel calculation but, instead of applying the percentage to the list price of the car, the percentage is applied to a figure known as the multiplier.

Since 2003/04, the multiplier has been set at £14,400. However, in the Pre-Budget Report it was announced that this multiplier will increase to £16,900 from 6 April 2008, a 17% increase!

Example

John is provided with a company car and fuel for 2007/08. The car has CO₂ emissions of 209g/km and a petrol engine.

For this car the appropriate percentage is 28%. The cash equivalent of the fuel benefit is £4,032 (£14,400 x 28%).

Under the new rules for 2008/09, the CO₂ emissions percentage rises to 29%, an increase announced some time ago. When this higher percentage is applied to the new figure of £16,900, the car fuel benefit increases to £4,901 (£16,900 x 29%), an overall rise of 21.6% for the employee! And the employer's Class 1A National Insurance, based on the taxable benefit, will also increase.

In order to make a car fuel benefit financially worthwhile, private mileage will need to be substantial. Whilst each computation will vary, due to differing levels of the benefit, fuel costs and fuel consumption of the car in question, as a rule of thumb an employee would need to be travelling at least 10,000 - 12,000 private miles per year to make the benefit cost efficient.

An alternative?

With such large increases, thought needs to be given by employers and employees as to whether the employee would be better off if they provided their own fuel and claimed a mileage allowance from their employer for business travel.

HMRC publish rates which can be used to reimburse employees tax free for business miles in a company car. These rates increased for journeys undertaken from 1 January 2008.

Engine size	Petrol	Diesel	LPG
1400cc or less	11p	11p	7p
1401cc - 2000cc	13p	11p	8p
Over 2000cc	19p	14p	11p

With such large increases in the car fuel benefit on the way, employers and employees should consider their positions and alternatives before April 2008. Please contact us if you would like to discuss this issue further.

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