

Wilson Henry —

providing tax solutions to owner managed businesses for over 50 years

Tax Proactive — November 2009



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Tax Proactive

Wilson Henry LLP

November 2009

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Tax Diary



1 November 2009 - Due date for corporation tax due for the year ended 31 January 2009.

19 November 2009 - PAYE and NIC deductions due for month ended 5 November 2009. (If you pay your tax electronically the due date is 22 November 2009)

19 November 2009 - Filing deadline for the CIS300 monthly return for the month ended 5 November 2009.

19 November 2009 - CIS tax deducted for the month ended 5 November 2009 is payable by today.

1 December 2009 - Due date for corporation tax due for the year ended 28 February 2009.

19 December 2009 - PAYE and NIC deductions due for month ended 5 December 2009. (If you pay your tax electronically the due date is 22 December 2009)

19 December 2009 - Filing deadline for the CIS300 monthly return for the month ended 5 December 2009

19 December 2009 - CIS tax deducted for the month ended 5 October 2009 is payable by today.

Message from David Kirby

Dear Readers

We are now just two weeks away from this year's Pre-Budget Report (PBR) on Wednesday 9 December.

It will be interesting to see what action the Chancellor takes in order to stimulate confidence in the Government's ability to cut the overall deficit and begin the task of balancing its books in advance of next year's General Election.

He is likely to look for an increase in the tax yield which is never easy in a time of recession. It is also likely, however, that most of the measures announced in the PBR will be deferred so as to come into force after the General Election.

Wilson Henry will be sending you a special update on the PBR as soon as we can after the announcements. Our next issue of Tax Proactive will no doubt also identify some of the important planning issues

Best wishes

David Kirby

Paying private bills through your company

Before we examine this issue from a **tax perspective** we need to emphasise the difference between limited companies and sole trader and partnership businesses in the way that they distribute taxed profits to the business owners.



Sole traders and partnerships are taxed under the self assessment rules. Profits are allocated as agreed by the business owners and tax is calculated on an individual basis based on this profit share. If sole traders or partners withdraw the retained profit after tax this is treated as drawings and not a business expense. It is possible for sole traders and partners to draw out more than the balance on their current account, to become overdrawn, and suffer no tax consequence.

Of course, there is no long term future in doing this as funds needed for the business will be dissipated and the business will drift towards insolvency. Businesses of this type pay tax on business profits, not the amount taken out of the business by the owners.

Limited companies and their owner directors are treated very differently. A limited company has a distinct legal identity of its own, quite separate from its shareholders/directors. Money that is withdrawn by the owners, in whatever way, always has a tax and possibly National Insurance consequence, except as a repayment of a loan from a director.

Essentially, money withdrawn by directors will be treated as:

- salaried earnings or benefits, and/or
- dividends

So if you pay your private bills through a limited company what happens.....?

If you already have money invested in your company that has been credited to a director's loan account in your name, then the payment of a private bill can be debited to this account, reducing the amount the company owes you. In this case there is no tax consequence.

If you do not have money invested in your company in this way, any private payments you make will create an overdrawn balance on your director's loan - you will owe the company money. Now there are tax consequences.

Continued...

If your loan account does become overdrawn the following options and tax effects are available to you.

- You repay the overdrawn balance. If this is done as soon as the payments are made there should be no tax to pay.
- The company writes off the loan. The balance written off will be treated as your earnings subject to PAYE and National Insurance, or in certain circumstances, as a dividend.
- The director's loan remains unpaid. A benefit in kind charge will be created equal to a statutory rate of interest for the time the loan is overdrawn in a particular tax year. This benefit can be avoided if the company charges your loan account with an equivalent interest charge. Unpaid director's loans can also create an additional corporation tax charge if the loan remains unpaid more than nine months after the company's year end. This extra tax can be reclaimed by the company when the loan is subsequently repaid, but there will be a delay.

Action point

If you need to overdraw your loan with the company it is better to plan for the tax consequences and perhaps find a more suitable way to extract funds from the company. Please call if you would like more information on this topic.

Tax appeals from 1 April 2009

A reminder to our readers that the way in which appeals are made to H M Revenue & Customs (HMRC), against decisions they have reached on our clients' affairs, has changed from 1 April 2009.

Up to this date appeals were heard by the General or the Special Commissioners.

From 1 April 2009 these bodies are replaced by a two-tier tribunal system and contentious issues will be referred to these tribunals unless the matter can be resolved by a formal internal review process.

A formal "internal review" of a decision made by HMRC is a statutory right. HMRC are required to take a fresh look at the facts. They will either decide that they were justified in reaching their decision, in which case you will need to use the tribunal system, or their review will find for the tax payer, in which case, job done.

As with all change processes it will no doubt take time for the new review and appeals processes to settle down.

Needless to say we will continue monitor the effectiveness of the new processes and ensure that all our clients affected by the appeals process obtain a fair hearing.

Redevelopment of Brown Field sites

The Finance Act 2009 makes significant changes to an existing tax relief and extends it to enable developers wishing to redevelop brown field sites to claim extra tax relief to help with their costs. The relief is **only available to companies** and is extended to include derelict land as well as contaminated land.

The redesigned **land remediation relief** grants tax relief of 150% of the expenditure incurred to encourage developers to concentrate on brown field sites. Developers who incur a tax loss as a result can also claim a refund of tax by surrendering those losses for cash.

The expenditure on which additional relief is available is restricted to expenditure on staffing costs, materials and sub contract expenditure, which would not otherwise have been incurred but for the state of the land and the expenditure is not subsidised.

To qualify for relief the land must have been acquired by the claimant company for the purpose of a UK property business or trade.



Land Remediation Relief is not available:

- where the company, or a party connected to the company, was responsible in any way for causing the contamination or dereliction.
- where arrangements have been put in place which either create or enhance a claim
- for cleaning up nuclear sites.

Land remediation tax credit - how much do you get?

If a company incurs a loss as a result of land remediation tax relief, a land remediation tax credit of 16% of the amount of the loss may be claimed in the company tax return. The losses will not then be available to carry forward against future profits. The claim will depend on the merits of each case. If cash flow is critical the tax credit might be the best choice even though you are sacrificing future loss relief which might instead provide corporation tax relief of at least 21%.

VAT and Vehicles – an update

New motor cars

Input tax cannot be reclaimed on the purchase of a new motor car that is available for private use. The only exception is if the vehicle is the actual tool of trading e.g. for a car hire business, taxi firm or driving school.

Note - with effect from 1 December 1999 vehicles are no longer treated as cars for VAT purposes if they have a payload of one tonne or more. Payload is the difference between a vehicle's maximum gross weight and its kerbside weight. In practice, the change mainly affects those vehicles generally described as "double cab pickups".

If you purchase a genuine "pool car", input VAT can be recovered if the following conditions apply:

- The car is normally kept at the principal place of business;
- It is not allocated to a specific individual; and
- It is not kept at an employee's home

Vans and commercial vehicles

There is no difficulty in claiming input tax on vans and commercial vehicles. But what if a van is partly used for *private* purposes – let's say for 20% of the time? You can either:

- claim 80% of the input tax on the cost of the vehicle at the time it is acquired i.e. to reflect the business use proportion
- claim 100% input tax at the time of purchase but then account for output tax on the private use element over a five-year period.

Vehicle Repairs

Even though a vehicle might be used for private purposes, 100% input tax can still be reclaimed on the costs of servicing and repairing the vehicle.

Important – scam HMRC e-mail

As we have reported in previous newsletters, HMRC do not request information from taxpayers by email. You may have received the latest scam email purporting to be from HMRC which is headed "Notice of Unreported Income". The email links to a fake web site which encourages you to download a "Fraud Application". This application is simply a ruse to open a potentially damaging file on your PC.

New Business Rates Valuation

All businesses should now have received their new business rates valuation. This valuation will form the basis of business rates for the next five years.

It is imperative that you check the fine print of the valuation to make sure that the rateable value applied to your property is correct. The rateable value is determined by a number of factors primarily the open market rental value on the valuation date. The valuation date for the 2010 changes is 1 April 2008. Appeals against the new valuations should be submitted **before 30 November 2009**.

Businesses should also be aware that there are a number of specific reliefs that you may be able to claim to reduce your business rates - these include small business rate relief (England and Wales) and transitional relief.

If you would like our assistance checking the valuation please call us. The Valuation Office Agency (VOA) website can be accessed at www.2010.voa.gov.uk/rli/en/basic and has a number of useful FAQ sections.

National Minimum Wage Changes

From 1 October 2009, the new National Minimum Wage rates are:

- Workers aged 22 years and older £5.80 per hour.
- Workers aged 18 -21 years £4.83 per hour, and
- All workers under 18 years who are no longer of compulsory school age, £3.57 per hour.

HM Revenue & Customs are responsible for monitoring the National Minimum Wage. It is they who will fine you if you fail to pay the correct rates. **Currently fines are 50% of the underpayment due to workers**, subject to a minimum £100 fine and **maximum £5,000 fine**.



From 1 October 2009, employers cannot use tips to make up wages to the National Minimum Wage, regardless of whether employees receive them through the payroll or in some other way.

Business property relief

Hidden away in the inheritance tax (IHT) regulations is a relief that can have a significant impact on the amount of IHT payable by estates which include "business property".

What is *business property*? It includes:

A business or interest in an unincorporated business	100% relief available.
A holding of shares in an unquoted company	100% relief available.
A controlling holding of shares in a quoted company (more than 50% of the voting rights)	50% relief available.
Land, buildings or plant and machinery used in a business of which the deceased was a partner at the date of death or used by a company controlled by the deceased	50% relief available.
Land, buildings or plant and machinery held in a trust where the deceased had the right to benefit from the trust and the asset was used in a business carried on by the deceased,	50% relief available.

Businesses which are mainly "investment" businesses are excluded from the relief, but qualifying business assets can potentially make a significant difference to IHT payable. Consider the following example.

At the date of his death, Alfred had assets of £1m in cash on deposit and shares in an unquoted trading company valued at £1m. The shares qualified as business assets. In his will, he left the shares to his wife, who wanted to continue running the company and had her own cash assets. Alfred's cash deposits were left to his daughter.

In this case, the transfer of the shares from husband to wife was free of an IHT charge so business property relief was wasted. However, the £1m in cash left to his daughter would create an IHT bill of £270,000. (£1m less nil rate band £325,000 at 40%).

There is a quite legitimate way to restructure the will and pay no IHT at all on Alfred's death. As a direct result of the required estate planning, Alfred's wife would obtain ownership of the shares and the daughter would have £1m in cash instead of £730,000 (£1m-£270,000 IHT).

Action point

The facts in this example have been somewhat simplified to demonstrate the importance of IHT planning. If you have business assets in your estate it might be an idea to review your will to ensure that maximum relief can be claimed. If you would like to know how the planning works in the above example and if it would have relevance to your estate planning, please call!

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David Kirby

If you have any feedback or would like to talk to us on any tax matter we would be delighted to hear from you – please email Derek Bargh (Derek.bargh@wilsonhenry.co.uk) or telephone 0151 264 8888.

Deferring a VAT Increase: 'Delaying The Inevitable'

Chancellor Darling cut VAT to 15% in December 2008 to boost the economy and has insisted it will return to 17.5% on 1 January 2010. Retailers and business groups are pressurising him to postpone the increase.

Many would argue that the VAT reduction was folly in the first place. The benefit to the economy of allowing business to retain or pass on VAT savings of as miniscule an amount as £1.85 for every £100 spent, when weighed against the costs of implementing price reductions, was never going to give rise to any great economic stimulus. The fact is that whichever colour of government is elected next year, they will need to raise taxes. It is only a question of which taxes, how much and when. Pushing back a VAT increase any time beyond early next is delaying the inevitable.

The double digit percentage decline in tax receipts this year, compared to last, has been alarming but is an obvious consequence of lower business profits and reduced payroll taxes occasioned by the sharpest recession in living memory.

The UK's VAT rate is among the lowest in Europe. The cost of the current temporary cut has been £12.5 billion. Economists predict that a VAT hike to 20% would raise £20 billion over the next four years.

The dilemma facing our politicians is whether merely restoring the VAT rate to its former level will be anything like enough, whilst at the same time avoiding policies that could fuel stratospheric inflation or excessively dampen consumer spend.