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# BUSINESS UPDATE

## Budget round up

### Is he your Darling?

Our round up highlights some of the key budget proposals likely to affect you and your business. We have provided further budget detail in the newsletter but if you would like to discuss any of the issues raised, please do get in touch.

### Personal tax

From 6 April 2010 there will be a 50% top rate of tax and in the following tax year, restricted tax relief on pension contributions, for those with taxable income over £150,000. This top rate will also apply to the income of trusts. A reduction in personal allowance entitlement will be introduced from 6 April 2010 for those whose income exceeds a £100,000 limit.

### Business tax

The ability to carry back trade losses for relief in earlier years by both an unincorporated business and a company has been enhanced. There is also a temporary additional capital allowance which may be useful if your business is planning on significant plant and machinery expenditure in the next year.

For companies no reductions in corporation tax rates were announced but the taxation of foreign dividends received by a company are generally to be exempted from corporation tax.

## SUMMER 2009

# Ready for Inspection?

HMRC investigations of any kind are costly in time and even more costly in the emotions they engender. The distraction they cause is likely to prevent you from effectively running your business. So is it possible to avoid them?

The honest answer is that no one has absolute immunity from investigation. There is always a small random element in the choice of cases for enquiry but there are a number of basic things that you can do to help improve your position.

The number one priority is to have an impeccable record of submitting all tax returns on time. This applies not just to the personal self assessment or the corporation tax return but also covers your employer returns like the P35, P11Ds and any regular VAT returns that you have to make. Regular delays in submission signal to HMRC that there may be control issues and puts the accuracy of basic business records under scrutiny.

Number two will be to always ensure that your returns are accurate and complete. HMRC have a wide range of information gathering powers and receive large amounts of information from third parties eg banks about amounts that might be paid to you.

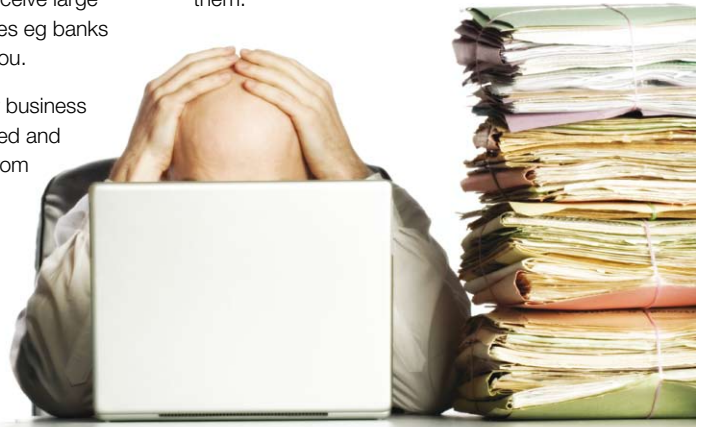
Number three would be to look at your business accounts when they have been prepared and try to explain any significant changes from the previous year. HMRC will look at trends in accounts and also compare them to results from other traders in your line of business. Marked differences will cause alarm bells to ring. If explanations can be given when the return is submitted that might prevent questions being

asked at a later date. Most obviously, look for the reasons for significant changes in turnover and gross profit rates – they are real favourites of HMRC, especially when drawings from the business or remuneration taken seems to be insufficient to meet perceived living expenses. There may be a very good reason why things have changed – make sure the Inspector knows.

Other issues like private use adjustments and valuations of stock or work-in-progress can also influence HMRC's view.

HMRC have new powers from 6 April 2009 which will alter the way in which they carry out investigations. They also have a new penalty regime that will inevitably mean that the level of penalties charged where tax has been lost due to negligence or deliberate action on the part of the taxpayer will increase.

You don't want to be involved in helping an Inspector get practical experience of how the new powers work! The 2008/09 returns will be prepared over the coming months. Give some careful thought as to what goes in them.



# Smart marketing in troubled times

For many small businesses, the marketing budget is often one of the first to be reviewed during times of economic difficulty. Whilst it may make sense to cut back on expensive advertising campaigns or new product launches, in a recession it is more important than ever to promote awareness of your products and services to protect your existing customer base and attract new clients.

## Retaining existing business

Statistics show maintaining your existing customer base is seven to fifteen times less costly than generating new business. Identify your top customers and concentrate your efforts on finding ways of adding value to encourage them to keep their business with you.

- Research current trends in the market to identify any appropriate adjustments to your products or services and demonstrate how you can meet the changing needs of customers.
- Cross-selling and up-selling to existing customers are cost-effective ways of increasing revenue. Consider introducing incentives to increase the volume and range of their existing orders.
- Introduce a loyalty scheme for valued customers to show your appreciation and to help secure future business.
- Communicate, communicate, communicate! Send regular newsletters of useful information and advice to remind your customers of how your products or services can help them.

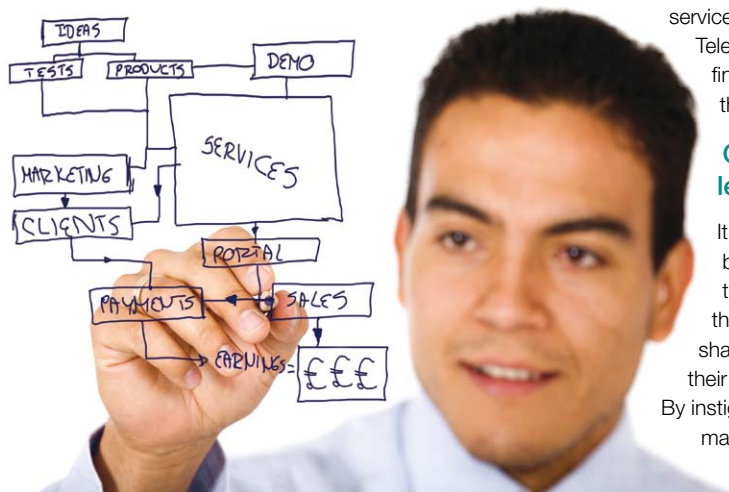
Telephone or plan a visit to find out how you can help them further.

## Generating new leads

It is important that businesses also continue to target prospects or they may risk losing market share, which may compound their difficulties in the future. By instigating some low-cost marketing strategies, you could even turn the

situation to your advantage by gaining market share from your competitors.

- Setting up a cross-referral system with your suppliers and other businesses that complement yours is a low-cost and effective way of generating mutually beneficial leads.
  - Attending conferences, networking events, trade shows or lunches can generate significant new business opportunities.
  - Testimonials are a particularly useful marketing tool, which offer a valuable level of reassurance to prospective customers from those who have already 'tried and tested' your services.
  - A well-designed and up-to-date website provides both prospective and existing customers with 24-hour access to your products and services, and can be an effective and low-cost way of generating sales.
  - Sending a monthly email update containing news, information and useful tips is another cost-effective way of keeping in regular contact with customers and prospects, and reminding them of how you can be of assistance.
- Focusing on the most cost-effective marketing strategies for your business will not only help you to remain visible in the short-term, but could also help to prepare your business for a time of future economic recovery.



# Act now not later

Finance Bill 2009 includes proposals for a number of changes which will not come into effect until next year and beyond but positive action may need to be considered on a number of areas over the coming months to ensure allowances and reliefs are maximised. This article targets on some of those areas.

## Furnished Holiday Lettings (FHL)

Unlike general property rental businesses, FHL are treated as a trade for certain taxation purposes. This is generally more preferential as losses can be set against general income and capital gains tax reliefs may reduce or defer gains. The current law on FHL is to be repealed with effect from 2010/11 but until then there has been a significant further announcement.

A key qualifying condition has always been that the FHL property was UK situated. Properties situated in the European Economic Area (EEA) are now included as eligible provided they meet the other qualifying criteria to be treated as a FHL. This treatment is to apply retrospectively and claims for revised treatment in an earlier tax year may be both possible and beneficial. Prompt action will be necessary to ensure HMRC deadlines for claims are not missed.

## Inheritance tax (IHT) and Agricultural Property Relief (APR)

APR reduces the value of agricultural property chargeable to IHT. Before Budget Day APR was restricted to property in the UK, the Channel Islands and the Isle of Man. Finance Bill 2009 extends relief to agricultural property in the European Economic Area (EEA).

IHT due or paid on or after 23 April 2003 in relation to agricultural property located in an EEA state will become eligible for relief.

Property qualifying for this extended IHT relief will also qualify for capital gains tax (CGT) hold over relief. Hold over relief allows deferral of a CGT charge (on a gift or sale at undervalue of a business asset) until the asset is disposed of by the recipient.

Hold over relief will be available in respect of disposals of agricultural property located in a qualifying EEA state in the past so again prompt action may be necessary to ensure time limits for claims are not missed in relation to earlier tax years.

## Capital allowances on plant and machinery

Additional capital allowances are to be available for expenditure incurred on a qualifying activity in the 12 month period commencing 1 April 2009 for companies and 6 April 2009 for individuals and partnerships. Most businesses have, since April 2008, been able to claim the new Annual Investment Allowance (AIA) on the first £50,000 spent on most plant and machinery. Expenditure on qualifying plant and machinery not covered by the AIA may be eligible for a temporary first year allowance (FYA) of 40% instead of 20% Writing Down Allowance (WDA). The FYA will not apply for expenditure on integral features, cars, long life assets and assets for leasing.

If you would like further information or advice on the above matters to assess whether you or your business could benefit then please contact us.

# Taxing times

You may remember the case of Arctic Systems and Mr and Mrs Jones. It involved a fairly familiar family company set up. The company was owned jointly by Mr and Mrs Jones. Mr Jones did most of the day-to-day work and generated most of the company's profit but the dividends were paid out (in accordance with the shareholdings) equally to Mr and Mrs Jones.

HMRC didn't like the tax savings that this generated and so attempted to use some old legislation to deal with it, often referred to as the 'settlements' legislation. The effect, had HMRC been successful, would have been to tax the dividends received by Mrs Jones on her husband. In order for these rules to apply, three conditions are necessary:

- an arrangement, understanding or definite plan exists;
- a tax advantage arises from what has been done, for example, the arrangement results in income being assessed at basic rather than higher rate tax; and
- the person who created the settlement (or their spouse /registered civil partner or minor children) retains some sort of interest in it.

HMRC did win all of these points in the Arctic case. However, the judge held that an exemption from the rules, for inter-spouse transfers, applied. This exempts inter-spouse transfers of assets from the rules provided that the transfer is not just a right to income. This exemption protected Mr and Mrs Jones.

Following this case, the government threatened to bring in what they called the 'income shifting' rules to catch people like Mr and Mrs Jones. However, in the Pre-Budget Report it was announced that the government had consulted on this issue but, given the current economic challenges, was deferring action and would keep the issue under review...

...but HMRC do not seem to have finished yet. They have recently resurrected the settlement rules in two cases and won both.

The first case involved a company owned by a husband and wife which issued shares to each of their three minor daughters. HMRC argued that the dividends paid to the three daughters until they each reached 18 constituted income arising under a settlement. The second case concerned a husband's waiver of dividends on 9,999 shares with the effect that a significant dividend was paid to his then wife, who held one share. The company did not have the distributable reserves to enable the dividends to be paid on his shares as well.

So beware... rumours of the death of the settlement rules seem to have been greatly exaggerated. If you have any concerns about these rules, please do not hesitate to contact us.

# Enterprise Finance Guarantee scheme (EFG)

The issue of new funds under the Small Firms Loan Guarantee scheme (SFLG) has been suspended, following the introduction of the Enterprise Finance Guarantee scheme (EFG). The SFLG was available to businesses without a track record and/or lacking in collateral. This will still be offered under the new scheme, as well as extending the offer to businesses who would be able to secure bank funding in normal circumstances but who are unable to in the present conditions.

The EFG works in a similar way to the SFLG – the government will guarantee lending to viable businesses, with the actual finance providers being commercial organisations. Currently 26 lenders are offering funds through the EFG scheme, including most high street banks. The total funds available for issue amount to £1.3 billion. As with SFLG, the commercial lenders will be the ones assessing applications.

The loans available under the scheme range from £1,000 up to £1m, with terms ranging from 3 months to 10 years. The maximum

loan available under the SFLG scheme was £250,000. The other difference between the schemes is the size of entity which can apply – under EFG, businesses with a turnover of up to £25m can apply, compared to just £5.6m under SFLG.

The EFG scheme will offer guarantees against new loans, re-financing of existing loans under certain circumstances, and the conversion of an overdraft into a loan.

The EFG scheme will be available up to 31 March 2010. Proposals for a replacement SFLG scheme to operate from 1 April 2010 are expected to be released later this year.

For further information, visit [www.berr.gov.uk/whatwedo/enterprise/enterprisesmes/info-business-owners/access-to-finance/sflg/page37607.html](http://www.berr.gov.uk/whatwedo/enterprise/enterprisesmes/info-business-owners/access-to-finance/sflg/page37607.html)

For an initial appraisal on the eligibility of a business visit [www.businesslink.gov.uk](http://www.businesslink.gov.uk). You can also complete an assessment to take to a participating bank.

# Expanding the holiday horizon

From 1 April 2009 the minimum statutory holiday entitlement for employees has increased. Whilst a regular full time worker is now entitled to 28 days (5.6 weeks) rather than 24 days (4.8 weeks), all employees will be entitled to the appropriate pro rata increase. Any days off for public or bank holidays can be counted towards a worker's statutory holiday entitlement as long as it is paid leave.

As different types of business have a variety of working patterns working out pro rata entitlement may be a tricky business but help is at hand as the government website [www.businesslink.gov.uk](http://www.businesslink.gov.uk) has a variety of useful information including:

- examples of how to prorate the revised holiday entitlement for different types of employees; and
- a template for a staff letter so that you can inform them of this beneficial change.

## Different leave years

If the holiday leave year of your business began before 1 April 2009, you will have to recalculate your workers' statutory holiday entitlement based on the number of months in the leave year falling after 1 April 2009.

For example, if the leave year runs from 1 January to 31 December 2009, your full-time staff will be entitled to nine months worth of the additional entitlement which is 3 days (9/12 x the 4 day annual increase).

## No payment in lieu of statutory holiday

Another key change is that, from 1 April 2009, payment in lieu of statutory holiday entitlement will no longer be permitted.

Payment in lieu of any leave above the statutory entitlement is still allowed depending on the employment contract.

If you require any assistance on this matter please contact us for further information.



# Unlawful dividends

Where a business is trading as a limited company, the issue of how the owners receive a return on their investment is an important one. In the current economic climate, dividend payments are generally the most tax efficient method of extraction for most individuals, irrespective of company size.

This article looks at the legal issues that need to be considered when withdrawing funds from a company by way of a dividend.

The rules governing the distribution of profits are complex. These rules have been established predominantly to protect the interests of creditors. Should a company go into liquidation, creditors have the right to repayment in preference to shareholders. This may not be fully possible if shareholders have taken more than they are entitled to as dividends.

As such, strict rules are necessary to govern dividends with consequences for shareholders and directors if the rules are breached.

## General rules

A company can only make a distribution by way of a dividend out of profits available for that purpose. These profits are defined as its accumulated realised profits not previously utilised, less its accumulated losses not previously written off.

In order to determine whether a dividend payment may be made, the Companies Act 2006 requires justification of the distribution by reference to relevant accounts.

Relevant accounts are the company's last accounts prepared in accordance with the relevant Companies Act, interim accounts or initial accounts if it is the company's first trading period. Both interim and initial accounts must enable profits, losses, assets, liabilities, share capital and reserves to be determined.

## Final or interim dividends?

Interim dividends are those decided upon during the financial year. These are recommended by directors. The dividend is approved during a directors board meeting and minuted. The dividend can then be paid to shareholders and the dividend voucher issued.

A final dividend is recommended by directors and approved by shareholders at their general meeting. Once this has been undertaken the payment and voucher can be distributed to shareholders.

## Consequences of unlawful dividends

An unlawful dividend is any distribution or part of one, made by a company to its shareholders that breaches the rules on dividend distribution in the Companies Act 2006.

The law is very specific in this area and a minor technical breach of them will lead to an unlawful dividend. The most likely example of a breach is insufficient profits to make a distribution. This is often caused by failure to prepare relevant accounts, before making a dividend payment

and so the lack of accurate information about the level of available profits, can result in an excess distribution.

The consequences of a breach in the law render the shareholders liable to repay the dividend to the company if at the time of the distribution they knew or had reasonable grounds to suspect it was unlawful. In a situation where the directors have not knowingly made an unlawful dividend, then contact us for advice.

Should an unlawful dividend be distributed, directors are considered to be 'in default' if they permit or fail to prevent the breach. This can lead to a liability that the directors have to pay personally.

### Comment

Due to the above, owner managers need to exercise particular caution when deciding whether to pay a dividend.

It should be remembered that there are other methods of withdrawing funds from a company and although dividend distribution is tax efficient, care should be taken when undertaking this method of extraction.

Should you require any accountancy or tax planning advice in relation to dividend distribution, please contact us.

# When less is more

Salary sacrifice is a term for what happens when an employee gives up the right to receive part of their salary due under their employment contract. Usually the sacrifice is made in return for the employer agreeing to provide the employee with a non-cash benefit. Certain benefits are tax and/or national insurance (NI) free and so both the employer and employee can save money.

Salary sacrifice is a matter of employment law, so when an employee agrees to a salary sacrifice, they give up their contractual right to future cash pay. The effect of the contractual change must be that the employee has given up the right to some of their cash pay in return for the benefit. HMRC will not accept a salary sacrifice as effective if the arrangement allows the employee to continue to be entitled to the higher level of cash pay.

HMRC will only consider whether they believe a salary sacrifice works if the employer provides details of the scheme and the new contractual arrangements once the scheme has been set up.

Whilst tax and/or NI savings can be made, a salary sacrifice is not always suitable for every employee. Employees may wish to consider the possible effect that a

reduction in their pay may have on any:

- pension contributions being made
- entitlement to Working or Child Tax Credit
- entitlement to the State Pension or other benefits such as Statutory Maternity Pay

Further, a salary sacrifice cannot reduce cash pay below the National Minimum Wage.

Common sorts of benefits that can lead to a tax and/or NI saving include:

- employer provided childcare or vouchers up to £55/week
- employer provided car parking at or near the place of work
- employer provided training
- employer pension contributions
- employer provided bicycles.

Each of the benefits have particular tax rules and care needs to be taken to make sure everything is done correctly. More information is available from [www.hmrc.gov.uk/specialist/salary\\_sacrifice.pdf](http://www.hmrc.gov.uk/specialist/salary_sacrifice.pdf)

If you would like help implementing a salary sacrifice arrangement, please do get in touch.

