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BUSINESS UPDATE

SUMMER 2008

UK200 GROUP news update

The problems which afflict businesses today seem to grow by the day. Coping with a constantly changing playing field of legislation and regulation can be a nightmare. Keeping up-to-date can be challenging enough for accountants, but a real worry for anyone running a business in today's environment.

In addition to dealing with clients' accounting, auditing and tax affairs, we pride ourselves on being able to help with the multitude of problems and pressures that tend to crop up by the day. As members of the UK200Group we are in the fortunate position of belonging to a professional organisation which guarantees quality assurance. We can also exchange ideas and experience with fellow members and we have the benefit of specialist groupings covering key business sectors. More than ever, UK200Group member firms strive for excellence and service delivery.

UK200Group
quality assured professionals

Twice nothing is worth a lot

The proposal to allow spouses and civil partners to transfer their inheritance tax (IHT) nil rate bands has been one of the bright spots of Alastair Darling's so far brief and troubled Chancellorship. The change means that where a surviving spouse or civil partner dies on or after 9 October 2007, their executors may be able to claim not only the nil rate band available to them (£312,000 for 2008/09) but also the proportion of the nil rate band unused on the death of the first spouse or civil partner.

For example, if the first spouse or civil partner dies in 2008 and leaves all their estate to the surviving spouse or civil partner who dies in 2011, then, on the second death, the estate of the survivor may have a nil rate band of say £350,000, plus another £350,000. This represents the full nil rate band of the first spouse or civil partner that was unused on their death.

If the first spouse or civil partner had made transfers to their children of say £156,000 on their death, then 50% of the nil rate band would be available and the total nil rate band due on the second death would be £525,000 (£350,000 + £175,000).

One of the real bonuses of the rules is that whilst they only apply where the surviving spouse or civil partner dies on or after 9 October 2007, the date of death of the first spouse or civil partner is irrelevant. This means that some significant tax savings can be made.

Supposing the first spouse or civil partner died in January 1995. The nil rate band then was £150,000. If they made no chargeable transfers then the unused proportion, 100% of the nil rate band, becomes available to the estate of the survivor but at the current rate, effectively turning £150,000 into £312,000!

Documentary evidence

HMRC have said that they will require information to support a claim for the transfer of a nil rate band. This will include:

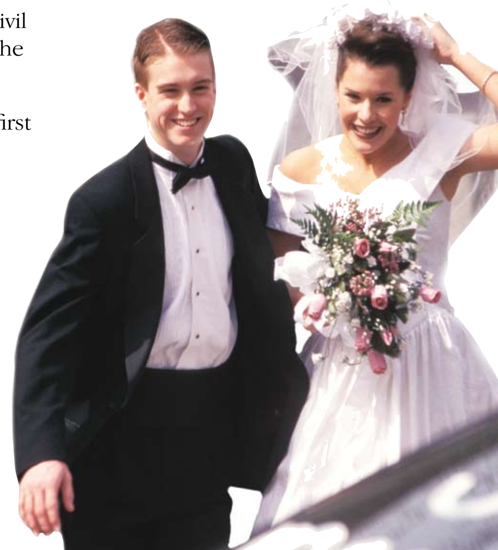
- the marriage certificate or civil partnership registration of the couple;
- the death certificate of the first spouse;
- the Will of the first spouse;
- probate details of the first spouse.

This information should be retained on future deaths and, given the advantages of the additional nil rate band, it may also be important to do some research to make sure that all of this information is available in respect of deaths before 9 October 2007.

Seven year rule

One point to be careful of is that, although the terms of the Will of the first spouse or civil partner may leave everything to the survivor and the full nil rate band appears to be intact, the operation of the IHT rules on the first death may have meant that some or all of the nil rate band may actually have been used. For example, gifts made in the seven years before death may have become chargeable and so used up part of the nil rate band.

Obviously, these rules are not straight forward. Please do get in touch if you would like any help with IHT planning.



In this issue

- Casualties in ER
- Car - fully does it
- Illegal working changes
- NMW changes
- Non residence - the new maths
- Income shifting - deferral of new rules
- Companies Act 2006 update

Casualties in ER

The adverse effect of the abolition of taper relief for capital gains tax (CGT) purposes for disposals on or after 6 April 2008 has been partially relieved by the introduction of Entrepreneurs' Relief. The use of the abbreviation ER is an unfortunate link to accidents and it is already clear that there are going to be casualties in this area.

The effects of ER

The relief works by reducing gains on qualifying assets by 4/9ths, leaving the balance of the gain taxable at 18%. By an amazing coincidence this gives a tax rate of 10%, the effective higher rate of CGT if an asset had qualified for full business taper relief.

ER may be available on gains of up to £1m over an individual's lifetime starting from 6 April 2008, so the impact of ER will be diminished once that limit is passed, whether on a single disposal or on a cumulative basis. The maximum ER which will be available is £444,444 (£1m x 4/9ths) and this means that the effective rate of CGT will climb towards, but will never actually reach, 18% for gains exceeding £1m.

The impact on commercial property

One particular area of concern is where an individual owns the premises from which a trader conducts their business. This might be their own business or a business run by an unconnected third party. Under the taper relief rules the gain on the disposal may well have qualified for some business asset taper. Under ER the disposal may not qualify for relief at all.

If the property has been used by the individual's own company and they sell the property at the same time as they sell the shares in the company, then ER may be available. A similar result may arise if the property has been used by a partnership of which the owner is a member. In either case, the sale of the property must occur as part of the individual's withdrawal from the business carried on by the company/partnership. In both cases the impact of ER may be heavily diluted if the property has been rented to the company/partnership at a market value rent.

In situations where the property has been let to unconnected parties ER will simply not be available and the full gain will be taxed at 18%. Without the benefit of indexation, which is also withdrawn for disposals by individuals and trustees on or after 6 April 2008, there could be a major increase in the potential CGT due on any future sale.

There are now different issues to consider if you are planning to purchase new premises for your business and, as well as the CGT issues, it is also important to consider the availability of Business Property Relief for inheritance tax purposes.

We are happy to advise you on these matters.

Car - fully does it

Q Do you run your own business?

Q Does your business own cars?

Q Are you, your spouse or any of your family members employees or office holders in the business?

If you can answer yes to these three questions, then you need to be aware of the benefit in kind that can arise on the provision of an employer provided car, more commonly referred to as the 'company car'.

A car benefit can arise where:

- a car is made available
- to an employee or office holder (low paid employees may be exempt)
- or to a member of their family or household
- by reason of the employment and
- is available for private use.

As you can see, the rules are specific and HMRC interpret them very widely. For example, HMRC have been known to argue that a car placed in storage, with no tax disc, insured third party only and with no wheels was available for private use – it could be cherished and admired by the employee! Mind you, it was a Porsche!

Not only did HMRC wish to assess the value of the car for several years, they also wanted to tax the provision of private fuel for the car paid for by the company. The potential bill ran into tens of thousands of pounds.

There are a number of situations where no car benefit charge will arise in respect of a car that is made available and actually used. These are where the car:

- is one that the employee is specifically prohibited from using for private purposes and which is not so used; or
- satisfies all the conditions to be treated as a pool car; or
- is used by a disabled employee under certain conditions; or
- is an emergency vehicle used under certain conditions.

The most common argument to try and escape from a potential charge is that the car in question is a pool car. However, in order for this argument to hold water, the car needs to satisfy **all** the following conditions:

- it is available to, and actually used by, more than one employee;
- it is not ordinarily used by any one of them to the exclusion of the others;
- any private use of the car by any of the employees is merely incidental to its business use; and
- it is not normally kept overnight on or in the vicinity of the home of any of the employees.

It is not impossible to satisfy these tests but HMRC would expect to see proof. As HMRC say, whether the conditions are met is a question of fact. Particularly useful is a full mileage log, indicating the date of the journey, the driver, the mileage of the car at the start and end of the journey and where the journey was to.

As you can see, the company car rules are very widely drawn and easy to fall foul of. Please contact us if you would like to discuss these rules and policies in more detail.

Illegal working changes

On 29 February 2008, the government introduced changes to the requirements which employers need to satisfy in order to avoid penalties and/or imprisonment for employing illegal migrants.

From this date the Immigration, Asylum and Nationality Act 2006 increased the civil penalty which can be imposed on an employer to a maximum of £10,000 for every illegal worker employed in the UK. It also introduced a new criminal offence of knowingly employing an illegal worker, with a maximum penalty of two years in prison and/or an unlimited fine.

An employer can avoid both a civil penalty and committing a criminal offence by checking, on recruitment, that workers have a right to work in the UK but to obtain this protection the employer must make the checks before the individual starts work.

There are two lists of acceptable documents for checking identity, similar to the lists which employers have used since 1997.

- List A contains items, such as a British passport, which have no time limits on working in the UK and which indicate that the person has an ongoing entitlement to work in the UK.
- List B sets out a list of documents which carry restrictions on the amount of time individuals will be able to spend in the UK.

A significant change is that employers will have to carry out annual checks for those workers whose documents appear on List B, such as work permit holders.

Obviously, the changes to the rules are substantial and you may wish to implement new procedures to deal with them. If you have any questions about the new rules, please see the detailed guidance at www.ukba.homeoffice.gov.uk/employers or get in touch with us to discuss how they might affect your business.

NMW changes

The National Minimum Wage (NMW) will rise to £5.73 (£5.52) an hour in October 2008.

The hourly rate for 18 to 21 year olds will increase to £4.77 (£4.60) and for 16 and 17 year olds to £3.53 (£3.40) an hour.

HMRC have an ongoing programme of targeted enforcement. The sectors currently subject to special attention include hairdressers, childcare providers and the hotel industry.

Please do get in touch if you have any concerns in this area.

Non residence - the new maths

Those who wish to achieve the status of being not resident in the UK have, amongst other issues, to be aware of the time they spend in the UK in a tax year. If they spend more than 183 days in the UK in any tax year then they will be treated as resident here. Spending on average more than 90 days a tax year in the UK (measured over a rolling four year period) may also present a problem.

Old rules

The common question that is asked in situations like this is 'what is a day?' In the past, HMRC adopted an approach that said that they would normally ignore days of arrival and departure. This has meant that regular visitors back to the UK could discount two days on every trip.

Let's take James as an example. He works full time for a company in France but he likes to come home each weekend to visit his family and, in addition, he always takes a couple of weeks holiday at home. In the tax year 2007/08 he was home for 49 weekends (Friday to Sunday) and also had 10 weekdays in the UK. He will have to count 49 Saturdays (each Friday and Sunday will not count because they are days of arrival and departure) plus 10 other days, giving him a total day count of 59 days.

New rules

HMRC have changed the rules from 6 April 2008, admittedly not as severely as they had originally indicated, but still enough to cause James and others like him to look closely at their situation. Under the new rules, any day where an individual is in the UK at midnight will generally count as a day of presence. (The original proposal was to have both days of arrival and departure counting as UK days.)

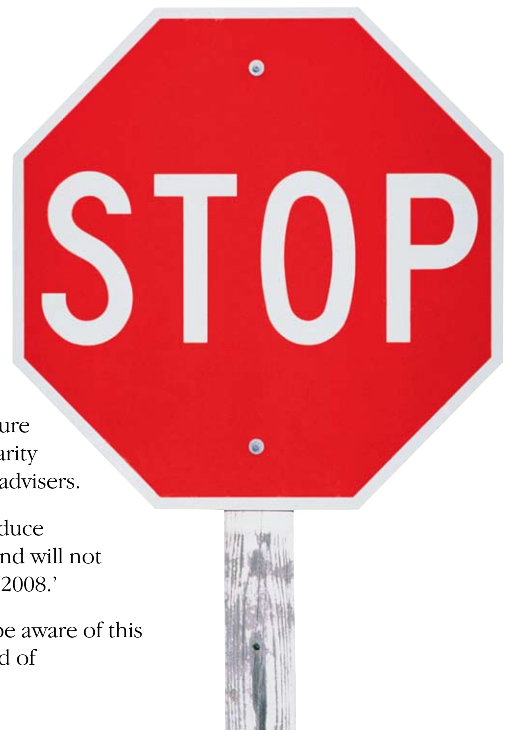
This means that if James continues his visits on the same basis, he will now find that two days each weekend will count, because both Friday and Saturday will be days spent in the UK at midnight. He will find that he has 108 days counting – not initially a problem but if the pattern continued he would have some difficulty meeting the 90 day average. He may therefore want to reconsider his pattern of visits.

Anyone who is regularly moving in and out of the UK will find the new rules a headache. The more visits they make, the bigger the problem, because an additional day may count each time. It is also important to keep a very careful record of movements in and out of the UK, so that if HMRC want to see evidence in support of a claim for non residence, it can be supplied. Whilst this may seem tedious, the time and effort spent could save real aggravation later on if enquiries are made.

Be careful

This article only features on one particular facet of the non residency rules, how to count a day! Non residency is an area that HMRC are currently very interested in and you may wish to talk to us about their current approach.

Income shifting - deferral of new rules



As you will no doubt be aware, the government were rushing full steam ahead towards the new income shifting rules, with a start date of 6 April 2008. These rules were designed to negate the tax advantages obtained by many families who run their own businesses. The advantage is usually gained by splitting income between family members to use up personal allowances and the lower rates of tax and the proposed rules were aimed at company dividends and partnership profits.

However, there has been a change of heart. To quote from the Budget Day press notices:

'The government firmly believes it is unfair that some individuals can arrange their affairs to gain a tax advantage by shifting part of their income to another person who is subject to a lower rate of tax.

The government has considered the responses received to the recent consultation and believes that a further period of consultation will ensure that legislation in this area provides clarity and certainty for businesses and their advisers.

The government now intends to introduce legislation through Finance Bill 2009 and will not enact legislation effective from 6 April 2008.'

Obviously, we felt you would want to be aware of this deferral and we will keep you informed of developments.

Companies Act 2006 update

The phased implementation of the Companies Act 2006 (the Act) continues and at the time of going to print six commencement orders, which bring the sections of the new Act into force, had been published.

The landmark implementation date of 6 April 2008 has now passed. This saw a number of important sections of the new Act that relate to accounts and reports and audit come into force. We have been busy deciphering the detail of the latest changes and there are a number of matters that may be of particular interest to you.

New size limits - is your company small or medium-sized?

Higher limits that determine whether a company can benefit from certain exemptions have been introduced. They apply to accounting periods beginning on or after 6 April 2008 and are as follows:

Individual company limits	Small company limits	Medium-sized company limits
Turnover not more than	£6.5m (£5.6m)	£25.9m (£22.8m)
Balance sheet total not more than	£3.26m (£2.8m)	£12.9m (£11.4m)
Number of employees not more than	50 (50)	250 (250)

Group limits	Small group limits	Medium-sized group limits
Net turnover not more than	£6.5m (£5.6m)	£25.9m (£22.8m)
Gross turnover not more than	£7.8m (£6.72m)	£31.1m (£27.36m)
Net balance sheet total not more than	£3.26m (£2.8m)	£12.9m (£11.4m)
Gross balance sheet total not more than	£3.9m (£3.36m)	£15.5m (£13.68m)
Number of employees not more than	50 (50)	250 (250)

These limits are important as they determine whether a company can benefit from the preparation of simpler accounts, file abbreviated accounts on the public record at Companies House and qualify for audit exemption.

Higher group limits - but will you need to prepare group accounts?

Importantly for medium-sized groups, the exemption from the preparation of group accounts has been abolished under the new Act, so those affected should pay particular attention to the new higher limits.

Don't be late!

Proposals to increase the penalties associated with late filing of accounts at Companies House have also been finalised. The increases will be introduced from 1 February 2009 and if accounts are filed late under the new Act in two successive years the penalties will be doubled.

Length of delay, measured from the date the accounts are due:	Private company		Public company	
	Current	New	Current	New
Up to 1 month	£100	£150	£500	£750
1 to 3 months	£100	£375	£500	£1,500
3 to 6 months	£250	£750	£1,000	£3,000
6 to 12 months	£500	£1,500	£2,000	£7,500
More than 12 months	£1,000	£1,500	£5,000	£7,500

Remember that the new Act also shortens the filing deadline to nine months from the year end for private companies and to six months for public limited companies, with effect for accounting periods beginning on or after 6 April 2008. That will be April 2009 year ends and onwards for most.

The demise of the company secretary?

The law no longer requires private companies to have a company secretary, although they may continue to have one if they wish. Many of the tasks that the company secretary performed remain and directors will have to ensure that these are still completed.

It is worth reiterating that because of the way that many of these sections of the Act are being implemented (for accounting periods beginning on or after 6 April 2008), you may not see the full effects of some of these changes until April 2009 year ends and onwards.

Please contact us if you would like to discuss any of these changes in more detail.

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