

REPORTING NEWS

FROM PEARSON MAY CHARTERED ACCOUNTANTS & CHARTERED TAX ADVISERS

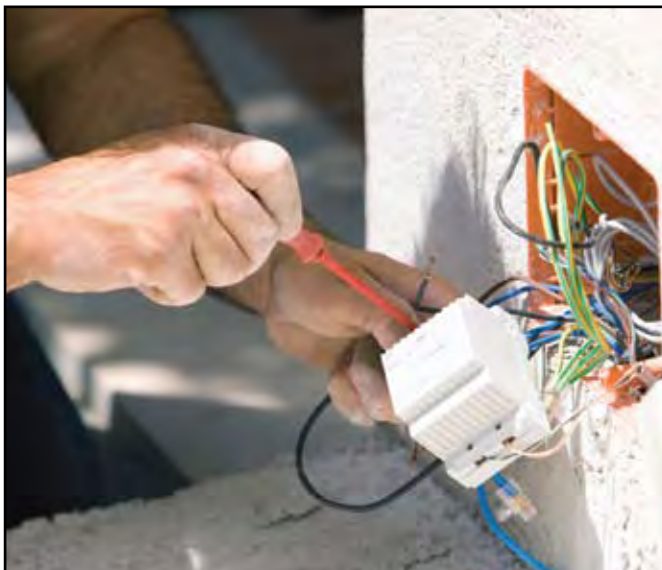
Summer 2011

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Capital allowances – the importance of timing

It is important for clients to understand the imminent changes to the current regime for granting tax relief on capital expenditure on plant and machinery and so-called “integral features” of buildings, such as electrical wiring.



For the year 2011-12 (ending on 31 March 2012 for companies and 5 April 2012 for individuals and partnerships) and 2012-13 the rates of allowance are as follows:

	2011-12	2012-13
Annual investment allowance (AIA)	£100,000	£25,000
Writing down allowance (WDA)		
Most plant and machinery	20%	18%
Integral Features etc	10%	8%

The drastic reduction in the AIA should particularly be noted and gives rise to the following general planning points:

- It will be important to plan expenditure on plant and machinery to maximise the use of the higher level of AIA. Generally speaking, and subject to commercial considerations, this means bringing forward purchases.
- This is particularly true of expenditure on qualifying integral features of buildings so that the AIA can be claimed (effectively a 100% allowance subject to a cap) rather than 8% pa on the reducing balance.

Continued overleaf

“There are three types of accountant:
Accountants who can count,
Accountants who can't count and
Accountants who do more than count”.

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Adding value

Capital allowances – the importance of timing

Continued

- For accounting periods which span 31 March (or 5 April) 2012 the amount of AIA available depends upon (a) the year end of the business and (b) whether the expenditure is made after 31 March (or 5 April) within the accounting period. The AIA can be considerably greater for expenditure incurred before these dates.

Please do not try to calculate the AIA to which you are entitled yourself based on the limited comments above; it is too complicated. What we would say is this: think carefully about what equipment purchases, including vehicles, other than cars,

you are going to have to make over the next two years. Pay particular attention to any building construction, alterations or improvements you may have in mind. It may considerably enhance your claims for allowances if you are able to bring the expenditure forward. The choice could be between an 8% allowance or a 100% allowance in the year that the expenditure is incurred.

If your expenditure on such assets is not likely to exceed £25,000 in any accounting period, you will not be affected by the reduction in the AIA, but, if it is likely to exceed £25,000 we suggest you discuss your plans with us ■

VAT bad debt relief

The first point to make is that this is not what it says on the tin. The relief is not just claimable when a debt becomes bad.

The main condition to be able to claim Bad Debt Relief (BDR) under current rules is that the customer has not paid for the goods or services within 6 months of the due date of payment. For example, if normal trade terms are for payment due 30 days after the date of the invoice then the entitlement to BDR comes about 7 months after the date of the supply of the goods or services.

It needs to be borne in mind also that businesses which use cash accounting and therefore only pay over VAT when their clients pay them have already received automatic BDR and are therefore not able to make further claims.

The basic law requires that the debt should be “written off in the Accounts as a bad debt” which seems clear enough and would indicate that accounting entries are needed. However, this rule does not mean that the business has to give up chasing the debt. Indeed, H M Revenue and Customs (HMRC) manuals confirm that they accept that the bad debt account can be maintained outside the normal accounting system which means any memorandum or other schedule of debts which are now more than 6 months old (using the above definition) validate a claim for BDR.

After the claim is made each business also needs then to have a means of keeping track of any of these debtors who subsequently pay up, as the VAT claim through the BDR procedures then has to be paid back to HMRC in the next VAT Return.

The initial BDR claim is incorporated within the input tax in box 4 of the VAT Return, but if it is subsequently repaid by the debtor, in whole or in part, the VAT associated with the amount paid has to then be included later in box 1.

HMRC take the view that the claim has to be included in the first available VAT Return after the 6 months following the due date of payment has passed.

An example probably explains this more clearly:

Mr Trescothick prepares his VAT Returns for calendar quarters. He issued an invoice on 28 March 2011 to a customer who failed to pay. The due date for payment was 30 days after the invoice, i.e. 27 April 2011.

There is an argument that the claim could be incorporated in the VAT Return for the quarter ended 30 September 2011 if it is submitted after 27 October. However, HMRC take the view that the claim will only be accepted on the Return for the quarter ended 31 December 2011.

In the record that is maintained of items included within the VAT BDR claim the following information must be set out:

- **The outstanding amount to which the claim relates.**
- **The period in which the tax was accounted for and paid to HMRC.**
- **The amount of BDR claimed.**
- **The period in which the claim was made.**
- **The amount of VAT chargeable on each supply.**
- **Any part payment received for the supply.**
- **The date and number of each invoice issued.**



Some businesses take the view that they can deal with a bad debt by issuing a credit note and thus reversing the output tax. Unfortunately, this does not generally work because credit notes are only accepted by HMRC if they reflect a genuine change in the consideration for the supply, i.e. that subsequent negotiations have led to the parties agreeing an amended amount for the supply of the goods and services in question. If the business still considers that the whole amount is due to it, if it can persuade the debtor to pay then a credit note is not acceptable.

Non payment of an invoice does include a review of a number of issues, as HMRC take the view that payment does not necessarily relate to the receipt of monies. If there is some sort of set off BDR is not available, even some fairly remote quid pro quo can also remove or restrict the entitlement to BDR.

One other facet of this whole situation that can catch businesses out is that the debtor may have reclaimed the input VAT in respect of the particular invoice in his VAT Return for the quarter in which the taxpoint (normally the invoice date) occurs. If that business has not paid the invoice within 6 months it has to repay HMRC the input VAT which it has claimed in its next VAT Return.

One particular area where this problem can create unexpected VAT penalties is if invoices between connected or associated companies are issued and are then not paid within the subsequent 6 months. If the input VAT previously claimed is not repaid to Customs and this is not noticed until the VAT Returns are enquired into by HMRC, penalties and interest can arise.

Reversing the transactions to put into effect BDR etc produces a nil overall effect, but under the new penalties regime fairly substantial sums of penalties (at least 30% of the VAT) are likely to be charged, even though there has probably been no overall loss to HMRC.

In summary therefore there seem to be a number of businesses that are not making BDR claims quite as soon as they are entitled to do, but once a system of dealing with these claims has been put in place there are of course significant cash flow advantages to making the claims at the earliest opportunity permitted ■

VAT Registrations

One issue which has cropped up on several occasions recently about which new clients seem to have had a substantial misunderstanding is the whole question of the extent of a registration for VAT purposes once that is held.

In simple terms, if a sole proprietor is registered for VAT that registration encompasses all activities which are carried on by him or her that are taxable supplies of goods or services in the course or furtherance of a business. For this purpose business includes a property letting business for example.

Thus an advantage of all activities being within the VAT registration arises for a sole proprietor who runs a newsagents and also has two or three buy to let properties in his sole name. In those circumstances, provided he does not breach the partial exemption limits (more about which below), then he will be able to reclaim input VAT that is charged to him in respect of letting agents' commissions, repairs and maintenance etc, to the let properties as well as on normal trading expenses of the shop.

If he is trading as a sole proprietor, but he owns those letting properties in the joint names of himself and his wife then unfortunately those VAT claims would not be available to him.



Another business of clothing retailing, again as a sole proprietorship, may have a significant disadvantage if the proprietor also owns, in her sole name, a holiday cottage in Devon which she rents out on a holiday lettings basis. In these circumstances her VAT registration will also include the lettings at that cottage and would mean that she would have to pay over to HMRC, VAT associated with the holiday lettings income from the cottage, but would on the other hand be able to reclaim the VAT on the expenses. However, she is likely to be out of pocket unless she has carried out significant repairs or improvements to the property.

As can be seen, careful advice is needed if individuals or partnerships have more than one activity.

Mention has been made above about the partial exemption limits that might apply to the newsagent and provided that the input VAT associated with his property letting activities and any other exempt income plus a proportion of his general overheads is less than £7,500 per annum, i.e. even at the 20% VAT rate, expenditure of £37,500 per annum, and provided that the total input VAT for the letting properties etc is less than the total input VAT for his retail business, then he will normally be able to reclaim all of the input VAT associated with the let properties.

It seems that there are many individuals who are registered for VAT and who own buy to let properties in the same name or names as their trading activities who are completely unaware of the fact that they can reclaim VAT. In many instances it may be relatively small amounts, but if significant repairs have to be carried out to one of the let properties the VAT claims can be relatively substantial.

One other problem area that can arise associated with this might be if, for example, our newsagent decided to acquire the business next door which is a launderette and he also purchases that in his sole name, but anticipates that it will not have to be registered for VAT as its turnover is less than the VAT registration threshold (currently £73,000). However, if it is purchased in his sole name and he trades as a newsagent as a sole proprietor then the launderette will immediately form part of his existing VAT registration and VAT will have to be accounted for in respect of the launderette income. Again, albeit that there may be some input VAT reclaimable in respect of expenses, but he is likely to be out of pocket in those circumstances.

One option available to him might be to purchase the launderette in the joint names of himself and his wife and trade that as a partnership, if he wishes to be outside the VAT registration. However, great care needs to be taken then to ensure that the two businesses have quite separate records, separate bank accounts and that all of the documentation correctly reflects that the launderette is in two names and the newsagents is in one name ■

Class 2 national insurance contributions for the self employed



From April 2011 all of those who are Self Employed and are liable to pay Class 2 National Insurance Contributions will have noted that their normal monthly payments, either by direct debit or by the issue of payment requests by H M Revenue and Customs (HMRC), have not been demanded.

For those who pay by direct debit these will either be collected monthly, but will thereafter be four months in arrears which means that the April 2011 payment will be collected on 12 August 2011 etc, or if you have opted for six monthly payments by direct debit these will be collected in January and July. For the year ended 5 April 2011 these will be collected on 13 January 2012 and 13 July 2012 with each payment being for £65.

If you currently pay by monthly direct debit and would prefer to pay half yearly then a new direct debit mandate has to be completed and this can be downloaded from the HMRC website. This is likely to save bank charges, if nothing else!

The contributions for 2011/12 are £2.50 per week.

For those who do not pay by direct debit a payment request will be issued half yearly. In October 2011 26 weeks contributions will be requested for the period 10 April 2011 to 8 October 2011 and this will be due for payment on or before 31 January 2012. In April 2012 the last 26 weeks of the year will be collected with a due date for payment of 31 July 2012.

The direct debit option is normally preferable as the payments should not then be overlooked ■



Insuring your business

Although most business people understand the need for insurance, a surprising number of businesses are uninsured, under-insured, or insured with out of date policies.

Experts usually advise that your planning should centre on insuring for a catastrophe. You should therefore check that your insurance for fire, loss of profits, employers' liability, public liability and product liability is correctly arranged with suitable sums insured or indemnity limits.

Any business could suffer a major loss in any one of the areas mentioned above. Under-insurance will result in a proportionate reduction in an insurance claim and could threaten the future of the business, or at the very least reduce its ability to trade.

Conversely, over-valuation will mean wasted premiums because the liability of an insurance company usually extends only to the cost of reinstatement of the insured asset.

In times of inflation, when property and stock values increase, make sure you still have adequate levels of insurance cover.

Shop Around

The services of an independent broker can be invaluable in establishing the best cover at the most competitive level of premium and helping to identify the risks requiring cover and the extent of the cover required. As with everything in life you normally get what you pay for.

Some of the more common types of insurance risks are:

Public Liability – claims for damages to third parties.

For example, a fire might start on your premises and spread to your neighbours' premises. Losses here might include profits or records.

Many of the higher awards are made in respect of third party claims for personal injury, which can run into hundreds of thousands – and in some cases millions – of pounds.

Employers' Liability – acts performed by your employees or sub-contractors.

Product Liability – injury or damage caused by a failure of your product.

The Consumer Protection Act has placed a greater onus on anyone dealing directly with the public. Proof of negligence is no longer required; the fact that a product causes injury frequently places the blame on the supplier.

Fire and Special Perils

Decide whether the valuations placed on premises and plant reflect a fair cost of reinstatement to new condition. Too often, plant is insured on a second-hand value and building values fail to take account of all the costs of rebuilding or reinstatement, including:

- **The cost of debris removal**
- **Professional fees, e.g. architects**
- **Planning or possible anti-pollution requirements that might be imposed by the local authorities**
- **VAT if it cannot be fully reclaimed**

Frequently the reinstatement value of your premises will exceed their market value.

Please Note: Standard policies will normally restrict the loss due to terrorist explosion (check this restriction with your insurer) – additional cover can be purchased.

Security

Insurers are placing greater emphasis on security of all types; sometimes insisting on NACOSS approved burglar alarms and specifying designated fire extinguishers.

It is still very common for back-up copies of computer data to be left adjacent to the computer system, so that even a small incident can cause serious damage to the business. Consider keeping your back-up off the premises.

Vehicles

Have you considered the options available for insuring business vehicles? Will you opt for full protection or accept costs below a particular level and insure for the excess? Discounts are often available for fleets of more than five vehicles.

If staff use their own vehicles, you have a number of obligations to check the appropriateness of their insurance cover plus MOT certificates, driving licences etc.

Stock and Work in Progress – Loss or Damage

Is the insured value adequate to cover seasonal fluctuations?

Are goods in transit or goods held in trust covered? Do check before working on customers' goods whether they need to be covered under your policy.

Are stocks vulnerable to special risks, e.g. flooding or power failure?

Loss or Profits – Consequential Loss

You can insure against loss of profits or increased costs that may arise as a result of disruption to your business. However, this type of cover is often the least well planned.

In essence, the insurers pay for loss of gross profit as a result of a reduction in turnover. For example, if you run a transport company, a fire could destroy the office, but turnover could be maintained because the vehicles can still continue to haul goods. There would consequently be no loss of turnover and therefore any gross profit claim would not normally be covered.

You should take into account a dependency on particular suppliers or customers. If they have a fire at their premises, it could have a serious effect on your business.

You also need to think about how long it would take to rebuild your turnover to its original level. Before this can even start, you may be involved with:

- **Replacement of machinery**
- **Planning permission for a new building**
- **Construction of a new building**

Most insurance policies cover you for twelve months, but is that enough? We have frequently found that cover for twelve months is insufficient.

Once the indemnity period has been chosen, it is vital to check that the sum insured is adequate. If, for example, your policy is due for renewal on 1 January 2012 and a claim occurs on 18 January 2012, the sum insured should be sufficient to cover you for the annual gross profit you would expect to have earned by 18 January 2013 or to 18 January 2014 if your cover is for two years. It is not sufficient to look at your last set of Accounts – you must project forward to the end of the next insurance period.

Factors you need to take into account include:

- **Loss of sales, accounting or business records**
- **Replacement of lost plant and equipment**
- **Costs of maintaining the business as a going concern, e.g. paying the wages and salaries and other standing costs**
- **The professional fees in preparing estimates upon which to base claims**

Cash – Theft or Loss

Such losses might arise on business premises or in transit, e.g. taking cash to the bank.

Keyperson Insurance

Are you covered for any damage or costs that might arise as a consequence of your death or the death or serious incapacity of key staff members?

Personal Accident and Permanent Health

Have you considered insuring against your own serious illness or death? How would you or your dependents deal with:

- **The continuation or disposal of the business**
- **Hospital and convalescence expenses**
- **Loss of present earnings**
- **Repayment of your own mortgage**
- **Payment of Inheritance Tax**

Personal Assets

You should also consider your insurance levels of your house, jewellery, credit cards, furniture, caravans and boats etc ■

Bribery Act 2010

1 July 2011 brought about the implementation of the Bribery Act 2010 (“The Act”). This Act has expanded on the existing legislation in relation to bribery, which was already an offence, by introducing new offences and widening the scope of The Act to cover offences committed abroad. The Act does have potential consequences for UK businesses and it is these that are covered in slightly more detail below:

Broadly speaking, there are four main offences detailed in The Act:

- **Offence of bribing another person.**
- **Offence of being bribed.**
- **Offence of bribing a foreign public official.**
- **Offence of failure of a commercial organisation to prevent bribery.**

The latter two offences are new offences that have been introduced by The Act and it is the last offence listed, i.e. failure of a commercial organisation to prevent bribery, that will have the most significant impact for UK businesses. The effect of the introduction of this offence is that businesses will now be criminally liable for bribes paid by employees or agents, unless the business has in place “adequate procedures” to help prevent bribery by any individuals associated with the organisation.

An organisation is therefore guilty of an offence under this section if a person associated with the organisation bribes another person intending to either obtain or retain business for the organisation or obtain or retain an advantage in the conduct of business for the organisation. For the purposes of this section of The Act, a person is associated with an organisation if he or she performs services for or on behalf of the organisation. This would therefore include employees, agents or subsidiaries of the organisation. The legislation states that the question of whether or not a person is performing services for or on behalf of the organisation is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between such a person and the organisation. However, it does state that if the person is an employee of the organisation it is presumed that the person is performing services for and on behalf of the organisation.

The offence of failure of a commercial organisation to prevent bribery applies to any body incorporated or formed in the UK which carries on business anywhere in the world, or any other body corporate (wherever incorporated) which carries on business in the UK. It also applies to a partnership which is formed under UK Law and which carries on a business anywhere in the world, or any other partnership (wherever formed) which carries on business in any part of the UK. The act would therefore apply to limited companies, limited liability partnerships and other partnerships.



The Act requires the Government to publish guidance about procedures that the above organisations could put in place to prevent persons associated with the organisation from bribing, as defined above. The final guidance was published at the end of March 2011 by the Ministry of Justice and can be downloaded via the following link <http://www.justice.gov.uk/downloads/guidance/making-reviewing-law/bribery-act-2010-guidance.pdf>.

The guidance includes six principles relating to bribery prevention that an organisation should consider when implementing “adequate procedures” designed to prevent bribery by persons associated with that organisation. The six principles are as follows:

1. Proportionate procedures – the concept that procedures should be proportionate to the bribery risks that the organisation faces and to the nature, scale and complexity of the organisation’s activities.
2. Top level commitment – based on the proposal that top level management should be committed to preventing bribery by persons associated with the organisation and that they foster a culture within the organisation in which bribery is never acceptable.
3. Risk assessment – this would appear to be one of the most significant principles and suggests that an organisation should assess the level of risk that is faced by the organisation taking in to account various factors and the guidance also states that the assessment should be periodic, informed and documented.

4. Due diligence – the basic concept that an organisation should apply due diligence procedures in respect of any persons with which it carries on business and persons who perform or will perform services for or on behalf of the organisation.
5. Communication (including training) – this principle states that the organisation’s policies and procedures in place to prevent bribery should be communicated and understood throughout the organisation, including training where necessary which should be proportionate to the risks faced by the organisation.
6. Monitoring and review – the basic concept that the organisation should monitor and review its procedures designed to prevent bribery by persons associated with it and make any changes or improvements as and when necessary.

An issue which has gained a significant amount of public attention and press coverage of late is the effect that The Act will have on corporate hospitality and promotional events etc carried out by organisations.

The guidance does cover this and, amongst other things, indicates that bona fide hospitality and promotional or other business expenditure which seeks to improve the image of a commercial organisation or to establish cordial relations is recognised as an established and important part of doing business and it is not the

intention of The Act to criminalise such behaviour. It then goes on to state that the Government does not intend for The Act to prohibit reasonable and proportionate hospitality and promotional or other similar business expenditure intended for these purposes.

It does not define what The Act considers to be reasonable and proportionate, but indicates that this will obviously vary depending on the size of the organisation and nature of the business carried on by the organisation, amongst other factors.

The guidance does also state that, in order to amount to a bribe, hospitality or promotional expenditure must be intended to induce a person to perform a function improperly.

In light of the above, for those organisations that fall within the scope of The Act, best procedure would be to develop “adequate procedures” to deal with any relevant aspects of The Act. This may include, for example, developing procedures that document and communicate to staff and associates the organisation’s policies on hospitality, promotional events and provision of gifts or other business expenditure etc.

The guidance does also include a number of case studies in relation to The Act that illustrate various aspects of The Act and suggestions for implementing “adequate procedures” as detailed above ■

Possible investments for higher rate taxpayers

If you are a higher rate taxpayer and you are wondering where to invest any surplus funds, do not forget National Savings Certificates.

By the time this publication is issued, they may no longer be available, but as an indication of what can be obtained at the time of writing this, the 48th issue of index linked National Savings Certificates is available and pays 0.5% above RPI. RPI is currently 5.2% thus meaning that the return would be 5.7%. For anyone who is a 40% taxpayer that is 9.5% gross and for those who may be 50% taxpayers it is equivalent to 11.4% gross.

Also to the extent that it is underwritten by the UK Government, it is a relatively risk-free investment.

The maximum amount of that particular investment which could be taken up was £15,000.

For those who are prepared to take somewhat of a gamble with regard to the return which they receive, premium bonds are of course another National Savings product and the maximum holding currently of those is £30,000 per individual ■





Companies Act 2006

Despite the fact that the final implementation of the Companies Act 2006 (“The Act”) was nearly two years ago, there are still some changes to The Act that companies either may not be aware of or are unsure as to how such changes may affect them.

Below we take a brief look at some of the key areas which have been changed by The Act and how your company may be able to take advantage of them. Many of the changes may only be implemented by altering or updating the company’s existing Memorandum and Articles of Association and appropriate advice should be taken before implementing any changes to ensure the new Memorandum and Articles are legally watertight.

Updating memorandum and articles

Under The Act, new model articles have been prescribed which replace the default memoranda and articles which were previously in issue under the Companies Act 1985. The new model articles are a stand alone document and the old Memorandum of Association has been dispensed with. The new model articles for private companies limited by shares are intended to be shorter and less complicated than the old default memorandum and articles and will apply unless the company registers its own articles of association.

Companies incorporated before 1 October 2009 will continue to be regulated by their existing memorandum and articles of association unless they choose to amend or replace them. There is no obligation on companies to amend or replace their existing articles but various new provisions which are included in The Act (some of which are mentioned below) may not be available to existing companies, or may be more difficult to enact, due to restrictions contained in their current articles. For this reason, companies may wish to amend their existing articles to take advantage of any relevant provisions under the new Act.

It is worth pointing out that Companies House should be notified of any amendments to the company’s articles within 15 days. Otherwise you could have committed a criminal offence and the company could be subject to a penalty of £200.

Filing companies house forms on-line

Companies House are actively encouraging companies to file more documents electronically rather than on paper and delivered by post. They have indicated that the majority of paper filing will be withdrawn by 2013.

This would appear to be further emphasised by the changes to some of Companies House fees (that took effect on 6 April 2011) whereby amongst other changes, the standard fee for electronically filing a company’s Annual Return fell by £1 to £14, whereas the fee for filing this form on paper rose from £30 to £40.

Companies can also register through Companies House website for PROOF (Protected Online Filing) which is a “secure filing scheme” that prevents unauthorised individuals filing forms for the company. Registering for PROOF will mean, however, that certain forms will then no longer be able to be submitted to Companies House by post (e.g. appointments/terminations of officers, change of registered office address etc.)

Residential and service addresses for company officers

Company directors and secretaries can now choose to nominate a ‘service address’ as their correspondence address at Companies House, rather than having their residential address appear on the public record. The residential address of directors is still required to be provided to the Registrar but can only be viewed by certain regulatory authorities including the police and H M Revenue and Customs.

The service address can be any address where documents can be delivered so directors or secretaries may wish to nominate the company’s registered office address as their service address.

The necessary forms have to be filed at Companies House to nominate a service address for officers of the company or it can be done by updating the details when the company’s Annual Return is submitted to Companies House. However, Annual Returns for earlier years will continue to disclose all addresses included in the forms at that time.

Single alternative inspection location

Companies can now establish a Single Alternative Inspection Location (SAIL) where the company's statutory books or some of the company's registers can be kept if they are not, or the company does not wish them to be, held at the registered office address.

Companies House need to be notified of the SAIL address if the company wishes to establish one and they also need to be informed of the specific registers that are located there.

Where companies already have their statutory books or registers kept at a location other than the registered office then they are also required to inform Companies House of this address. Frequently of course the SAIL address is one of our offices if the statutory books are held by us.

Penalties for late filing of accounts

The penalties for accounts that are filed late with the Registrar of Companies have increased under the Companies Act 2006. This provision has been in force for some time but many companies may only be feeling the full effect of the increases now, particularly if a prior year set of Accounts were filed late, in addition to the current year's. It is therefore worth recapping the new penalties and the table below summarises these:

How late accounts delivered	Private 'Limited' Company	Public 'PLC' company
Less than 1 month	£150	£750
1 month – 3 months	£375	£1,500
3 months – 6 months	£750	£3,000
More than 6 months	£1,500	£7,500

Further penalties are also payable if two consecutive sets of accounts prepared under the Companies Act 2006 (i.e. accounting periods beginning on or after 6 April 2008) are filed late. Under this provision, the penalty is doubled for the second consecutive set of accounts filed late.

Other changes under the companies act 2006

Company names

It is now possible under The Act to set out in the articles the terms required to change the company name. The articles can therefore be tailored to suit the individual needs of the company. This gives the company more flexibility since previously the change of name had to be by special resolution of the members. This will, however, most likely involve making changes to the company's existing articles if the company was formed before 1 October 2009.

Share Capital

Companies formed after 1 October 2009 will no longer have an authorised share capital as this concept has been abolished under The Act. The authorised share capital was effectively a limit on the number of shares the company could issue. Companies formed before 1 October 2009 may, however, be restricted by their existing articles although the articles can be amended in this respect by ordinary resolution.

Capital Reductions

Capital reductions can be used to facilitate the striking off of companies or to simply restructure share capital. Under The Act it is no longer necessary for private companies to obtain a court order to make such a capital reduction. Instead, the Act contains simplified provisions which allow for a reduction of capital by way of a special resolution supported by a solvency statement made by the directors. As always, it is important to check the company's existing articles to ensure there is no prohibition on such a reduction of capital.

Company Secretary

It is no longer a requirement under The Act to have a company secretary unless the existing articles of the company require a secretary to be in place. In practice, this is usually only the case where the company in question was incorporated a number of years ago. Many companies may however choose to retain the company secretary for practical reasons.

Annual return changes

Companies House have indicated that they are in the process of consulting on various changes that could be applied to the Annual Return form.

Amongst these possible changes is the revision or amendment of the requirement to disclose the company's "amount paid up and the amount (if any) unpaid on each share". This requirement has caused problems to many companies, most notably plcs. Companies House have also indicated that there may be scope to amend the requirements to give details of the "prescribed particulars" of each class of share, which includes voting rights etc. This requirement which was introduced by the Companies Act 2006, has caused a lot of confusion for companies and increased the work associated with Annual Returns, with many still unsure of the wording that should be used.

The above possible changes are only in the early consultation stage, with no fixed implementation date. There is, however, one change to the Annual Return that is due to take effect from October 2011. This is in relation to the "SIC" codes required on the Annual Return to give details of the company's principal trading activities. The codes used are being changed and will now be taken from the 2007 Standard Industrial Classification codes instead of the 2003 SIC codes, currently used. This means a change from 4 figure codes to 5 figure codes so a company will need to select a new code from the revised list, based on the code currently used ■



Gift aid payments

This is a matter which we have addressed in earlier issues of this publication, but it certainly seems to be a matter where tax relief claims are available to clients and frequently no record is made of the payments and we need to be made aware of the details for the completion of Tax Returns.

This is particularly relevant of course for higher rate taxpayers as additional tax relief is then available in respect of donations to charity made under the gift aid rules.

Gifts to charities for this purpose can include sponsorship of family members or indeed friends etc., taking part in various events including marathons and half-marathons etc., part of the subscription to the National Trust, frequently part of the entry fee to other stately homes not owned by the National Trust (this is applicable to Chatsworth House for example), many donations to churches etc.

The effect of the inclusion of these payments in a Tax Return for a higher rate taxpayer can be that a gift of £80, i.e. the actual cheque drawn in favour of the charity is for £80, enables the charity to reclaim the £20 basic rate deemed to have been deducted. Thus it has received £100 in total.

For those who under the new provisions may have a marginal tax rate of 50% or 60%, the additional tax relief can be £30 or £40 on an £80 donation.

It is possible to backdate a gift aid donation and thus if, for example, after the completion of his Tax Return for the year ended 5 April 2011 an individual found that he had £1,000 of income

taxable at the 60% marginal rate, he could make a donation to charity in the year ended 5 April 2012 and backdate that to 2010/11 and thus obtain some tax relief at the additional 40% rate in addition to the charity obtaining the 20% tax repayment.

It is possible therefore to benefit your favourite charity at a relatively low net cost if part of your income falls into one of these new higher rates.

The chief moral to the story however is that each of us needs to keep a regular note of all donations that are made to charity during each tax year. A spreadsheet set up for each tax year or a manuscript note made in your Tax Return file each time any form of sponsorship or donation is made can enable maximum tax relief to be obtained.

Non taxpayers need to be very careful about making gift aided donations as they can normally become liable to the basic rate tax which will be reclaimed by the charity.

If a couple are contemplating making a donation to charity and the wife is a higher rate taxpayer and the husband is not, then it makes considerable sense for the wife to be the donor, rather than it possibly being a joint donation ■

giftaid it

 National Trust

Might you have to submit a US Tax Return?

New legislation has been introduced in the United States by President Obama which means that all US persons, wherever they may live, have to report a substantial amount of information in relation to their income and financial affairs generally, in respect of assets held after 1 January 2011.

So who precisely is a “US person”? It includes virtually everyone who was born in America, as well as anyone who has a US Green Card, even if it seems to have expired. It also includes many people born outside the US who have at least one US parent, as well as naturalised US citizens. Starting in 2013 almost all UK financial institutions, banks, investment firms, unit trusts, pension plans etc will be compelled to report to the IRS in the United States, a huge amount of personal information on all US persons holding accounts with them.

There are very substantial penalties for anyone who is a US person who fails to comply.

Any client who thinks that this may affect them should contact us as a matter of some urgency in view of what is potentially only

a limited amount of time to deal with some of the regulatory aspects. It may be necessary to obtain specialist advice on US tax issues and we have contacts, if this is necessary.

For those who are required to submit information, this will include valuations of a number of assets every year and could include valuations of unquoted shares etc. ■



Entitlements to state retirement pension

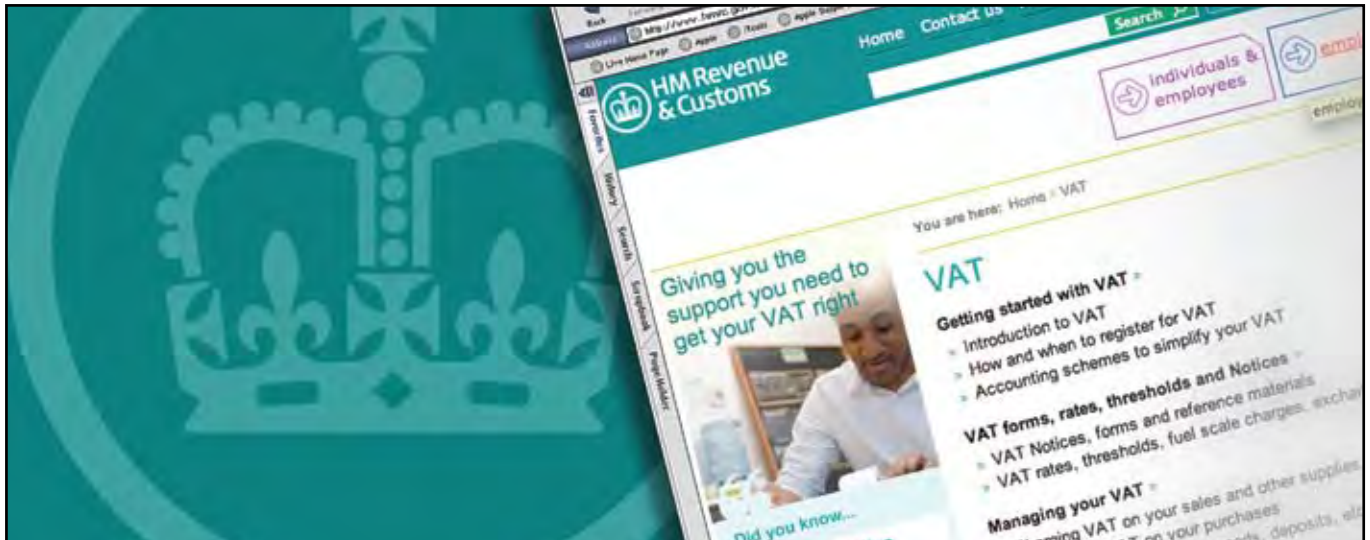
We have included previously articles in respect of entitlements to state retirement pension.

We are still finding many occasions when clients refer details of their potential entitlements to us as based on the information provided to them by the Pension Service that appear to be incorrect.



We recommend that most clients contact the Pension Service on www.direct.gov.uk/en/pensionsandretirementplanning/statepen. If you then find that the projected state pension is less than that which you had anticipated, you will need to query it and ask them to provide details of how they have computed the pension to which you seem to be entitled.

There may then be gaps in the contributions where the information has not been correctly processed by HMRC and credited to you and, in particular, for women who have taken time off to care for children, they may not receive the appropriate credit for Home Responsibilities Protection. Again, you will need to provide details of the dates of birth and names of your children to ascertain whether you have been given the correct credit ■



I am registered for VAT, what input VAT can I reclaim?

Most business people think that they know the answer to the above, but there are a number of complications which can arise.

- However, there is one overriding principle which is sometimes overlooked and that is that the supply of goods or services must have been made to the taxable person, i.e. the sole proprietor, if he is a sole trader, the partnership if he trades as a partnership etc. The name on the invoice may not correctly reflect the transaction.
- The VAT must have been correctly charged at the correct rate. If you have been incorrectly charged VAT on a zero rated supply, that is not Input VAT that can ordinarily be claimed.
- If you have paid an expense that belongs to another business, you cannot claim the Input Tax, even if you hold a purchase invoice made out to your business. This can frequently arise when there are associated businesses. One transaction which often creates problems in this regard is if your bank require you to have a valuation of your premises carried out before they will make a loan to you. The bank will normally charge the potential borrower for the survey/valuation cost, but as the instructions for the valuation to be carried out will have been given by the bank and the supply of the services of the valuation is to the bank, the Input VAT charged by the Valuer cannot be reclaimed by the business, even if there is an invoice addressed to the borrower.
- There are other more well known limitations on Input VAT claims, including those relating in most cases to the purchase of motor cars and entertaining costs in relation to non-employees, apart from some entertaining for overseas customers.
- If a business leases a car, then only 50% of the Input Tax charged by the leasing company can be reclaimed. If this is more than a leasing agreement but is a contract hire arrangement, normally the hiring institution will split their invoice as only 50% of the VAT related to the hire of the car can be reclaimed, but normally 100% of the charge element related to the maintenance etc of the car is claimable.
HMRC are relatively generous in allowing full recovery of Input Tax on the costs of repairing and servicing motor vehicles, including vans, and allow 100% recovery as long as there is some business use.
- One other area which can cause problems is the situation with regard to businesses reimbursing employees for business motoring carried out by the employee. This is frequently at HMRC's Fixed Profit Car Scheme rate which is then not subject to Income Tax in the hands of the recipient, which was 40p per mile up to 5 April and is 45p per mile from 6 April 2011.
The business can claim Input Tax on the fuel element and the rate of this can be ascertained in most cases by accessing on the HMRC website their fuel advisory rates for different sizes of engine and different types of fuel. Frequently, VAT can be reclaimed on say 12p per mile at the standard rate of VAT which would therefore currently be one-sixth whilst the VAT rate is 20%. One aspect of this which is frequently overlooked however is that each employee making a claim for his or her mileage must attach the original of an invoice for fuel purchased by them during the period covered by the claim. If that is not attached to the claim, the Input VAT is irrecoverable by the business ■

Expenses claim for buy to let landlords

Those landlords who make journeys which are wholly and exclusively for their property rental business can claim a deduction for the travel costs whether these are, for example, rail fares or travel in your own car.

HM Revenue and Customs (HMRC) like to take the view that if a journey has dual purpose, then it is not allowable, e.g. if during the journey you carry out one task for your buy to let business and another personal one. However, that is not necessarily so.

If Janet and John live in Bradford-on-Avon and have buy to let properties situated in that town, plus a flat in Bath which is let on a buy to let basis and also another house in Chippenham which is let on a similar basis, then they may have considerable expenses which can be claimed as a deduction in their Tax Returns, from the taxable income. If they travel from Bradford-on-Avon to Bath with the sole reason of visiting their flat after the departure of a tenant to check up on some works that may need to be done, then that journey would be allowable, even if on the way back they call into the newsagent to purchase a newspaper. If the next day they drive to B&Q to purchase some building materials, which they then take to the flat in Bath and carry out a number of minor repairs before returning via their property in Chippenham, which they also wish to inspect, then all of the miles travelled both to B&Q, to Bath, to Chippenham and back to Bradford-on-Avon would all be claimable.

For the year ended 5 April 2011, most buy to let owners can claim at the rate of 40p per mile for travel associated with their buy to let businesses, provided they keep a detailed log of the journeys which they have carried out and the reasons for them. For the current year, the rate will be 45p per mile.

For landlords who use Letting Agents to manage their properties, the Letting Agents frequently arrange for a number of repairs and maintenance tasks to be carried out for the landlord. Landlords can forget that there are other expenses which they incur themselves, possibly purchasing materials or perhaps paying maintenance agreements in respect of central heating boilers etc. Provided all of the expenses are related to repairs, these can all be claimed and can be added to those items which are authorised and paid for by the Letting Agent before claiming these expenses against rental income received for Income Tax purposes.

Our buy to let landlord can also claim the cost of insurance premiums which he or she pays, to insure the building etc.

Interest paid on loans taken out to acquire or improve a buy to let property can also be claimed, but it is only the interest not the full repayments if it is a repayment mortgage.

One tip here is that buy to let mortgages can attract interest rates much greater than those applicable to mortgages to purchase a home for your own residence. If there is considerable equity in your main residence in terms of its market value significantly exceeding any mortgage still owing on that property, it may be possible to take up a loan with your existing lender secured on your main residence, but where the funds are clearly used to repay an existing mortgage on a buy to let basis or even to purchase a new buy to let property, that interest is still claimable even though the loan is secured on your own main residence.

Some lenders will agree to this at residential mortgage rates but this is more difficult to achieve than it was three or four years ago.

There has to be a very clear trail to show that that capital was used for the qualifying purpose of repaying an existing loan, or financing the purchase of a new property.

All taxpayers receiving rental income will need to inform HMRC and request a Self Assessment Tax Return if they do not already receive and submit one.

If losses were made in earlier years when interest rates were higher, loss claims need to be made within time limits. The losses can then be offset in current years when surpluses are being achieved, to reduce current taxable surpluses. Formal claims do have to be made to HMRC for in date years, if those have not already been made ■



Pearson May charity golf day



We are sponsoring our fifteenth annual Charity Golf Day at Cumberwell Park Golf Club, Bradford-on-Avon on Thursday 1 September 2011.

This year we are supporting four charities, Dorothy House, the hospice at Winsley, Bath Cancer Unit Support Group, Stepping Stones, a pre-school facility for special needs children, and West Wilts Portage which supplies similar support to special needs children in their homes.

The aggregate sum raised for our charities over the fourteen previous years now exceeds £65,000. Indeed, after the 2010 Golf Day, we received a letter from Dorothy House thanking us for having raised for them almost £20,000 since we commenced our golf days in 1997. We would like to thank everyone who has taken part over the years, particularly those who have entered almost every year.

Anyone who would wish to take part in the event, either by entering a team or by joining others to form a team should contact Carole MacDonald at our Trowbridge Office on 01225 764441, or e-mail: carole@pearsonmay-trowbridge.co.uk ■

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