

Talking Tax

The Hazlewoods Tax Newsletter

Welcome to Talking Tax, the newsletter from the Hazlewoods tax team, which provides an update on some current tax issues.

In this edition we look at some of the effects of the recent Pre-Budget Report (PBR), and what has widely been described as the most important PBR for a generation. We will highlight some of the headline issues, but also pick up on a few of the less well publicised points, such as the introduction of the Business Payment Support Service and the latest news on the proposed income shifting legislation.

In addition to this we will cover various other topical tax issues including a review of Enterprise Management Incentive Share Schemes, and some thoughts about extracting property from your business.

If you would like further guidance on any of the issues covered in this Newsletter please contact your usual Hazlewoods tax contact or e-mail tax@hazlewoods.co.uk.

We would also be interested to hear of any issues you would like to see covered in future Newsletters. If you have any such ideas please e-mail meg.wilson@hazlewoods.co.uk.

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Pre-Budget Report - the basics

We are sure that by now you will have heard all the headline changes announced in November's Pre-Budget Report. However, if you would like a summary of these please visit our dedicated PBR web pages at www.hazlewoods.co.uk.

It is worth reiterating that;

- the 2.5% fall in the standard rate of VAT is temporary and the rate will be reverting to 17.5% on 1 January 2010;
- from April 2010 individuals with earnings in excess of £100,000 per annum will have their personal allowance tapered;
- the new 45% tax rate for individuals earning over £150,000 per annum will be effective from April 2011; and
- the 1/2% increase in national insurance contributions will be effective from April 2011.



Pre-Budget Report

- how can it help you?

As well as the announcements about specific tax changes, the PBR also provided the Government with an opportunity to help taxpayers with their tax liabilities in the current economic climate.

Perhaps the biggest aid to help those who are having cash flow difficulties is the creation of the Business Payment Support Service (BPSS). This is a dedicated helpline which tax payers can call to make an arrangement with HM Revenue & Customs (HMRC) to pay a liability in more than one instalment, later than its due date.

Any taxpayer who is having difficulty with any form of tax liability; individual self-assessment, corporation tax, VAT or PAYE, is capable of entering into an agreement so long as the liability is not currently being dealt with under HMRCs normal recovery procedures.

Benefits

Entering into a time to pay arrangement can help your cash flow position by spreading an imminent or existing tax liability over a number of months.

For individuals, if an agreement is executed before 28 February 2009, in respect of a liability due on 31 January 2009, then HMRC have agreed that the normal 5% surcharge penalty will not be charged. However, interest is still charged on any underpayment as normal until the liability is paid

Experience

From recent experience the BPSS are willing to help taxpayers manage their tax liabilities as much as possible. The BPSS are able to agree the settlement of liabilities on initial contact,

- where the tax is not yet due and the liability is less than £100,000, or
- where the due date has passed and the liability is under £10,000.

For any amounts in excess of the above the case is referred to a local recovery office and is normally dealt with in 4 working days.

Whereas HMRC previously required evidence of the taxpayers inability to pay and that they had exhausted all other sources of finance, cases agreed by the BPSS and those referred to the local offices are in general now agreed with a short telephone conversation, so long as a reason can be given as to why the taxpayer needs time to pay.

What to do next

As soon as you can, consider whether you will be able to make your imminent tax payments. If you are likely to have insufficient funds, contact Hazlewoods or HMRC direct to see if you can agree time to pay. As announced in the PBR, businesses can call the BPSS on 0845 302 1435 for help.

A slice of the cake!

Are Enterprise Management Incentives still beneficial?

Following the withdrawal of taper relief in April 2008 some of the benefits of Enterprise Management Incentive (EMI) Options as a staff incentive were reduced. EMI Options give an employee the ability to acquire shares in the company at some point in the future.

Prior to the changes, the principal benefits of EMI Options were that the shares over which they were granted were business assets for taper relief and would, providing they were held for over two years (the period of ownership commencing on the date of grant of the Option), benefit from an effective 10% tax rate, when the shares were sold.

However, for EMI Options from 6 April 2008 the attractiveness of the capital gains position has been reduced. In order to achieve an effective 10% tax rate the shares acquired under the Option must meet the conditions for Entrepreneurs' Relief. The two conditions which are likely to restrict this relief for EMI Options are that:

- the shares have to be held for at least twelve months prior to disposal, with the period of ownership only commencing from the date of exercise of the Options; and
- the individual has to have a holding of at least 5% of the ordinary share capital. Whereas in most cases this is unlikely to be met as Options are normally granted over very small shareholdings.

The effect of this is that for many EMI Option holders who may have been expecting to suffer at most a 10% tax charge when they exercised their Options and then sell the shares acquired, the tax charge is now likely to be 18%.

However, all is not lost as EMI schemes can still offer PAYE and National Insurance savings for companies looking to incentivise employees with shares. This is due to the fact that the price that an employee needs to pay to acquire shares to avoid adverse income tax consequences is based upon a discounted value on the date the Options are granted.

Supposing that the current value per share of the company is £2. If the employee is able to exercise his/her Options in, say, five years time, when the company is valued at £10 per share, they still only need to pay £2 and will have immediately made a gain of £8 per share.

Even if the conditions for Entrepreneurs' Relief are not met between exercise and sale, the



gain should only be taxed at 18%. This is still better than the effective 41% tax on any income the individual receives from employment (assuming a higher rate taxpayer).

Another very important consideration given current market conditions, is to review old existing Options and potentially agree a revised lower share price. In addition at the same time the documentation could be varied to allow for more flexibility on exercise dates. Therefore it is very much the time to dust off those old Option documents and see this as an opportunity to provide an improved incentive to employees at potentially no added cost.

Shift in time

Income shifting update

One of the most important items within the PBR was the further postponement of legislation to counter income shifting.

The issue

Following the Revenue's loss in the case of Jones v Garnett (Arctic Systems) in the House of Lords back in July 2007, the Government announced a consultation period in the 2007 PBR with a view to changing the law. The consultation document, including draft legislation, was issued in December 2007 and it was proposed that new legislation be introduced in April 2008. The proposed legislation was designed to prevent a tax benefit arising from the transfer of income from one person to another, such as in

- husband and wife companies; and
- partnerships where one partner receives a greater share of the income than one might expect based on their contribution to the business

As reported in June's Talking Tax, in the 2008 Budget the Chancellor announced that the introduction of the legislation would be delayed until April 2009.

Latest news

The 2008 PBR includes the following statement:

"The Government firmly believes it is unfair to allow a minority of individuals to benefit financially from shifting part of their income to someone else who is subject to a lower rate of tax, known as income shifting. The Government

has consulted on this issue but, given the current economic challenges; **the Government is deferring action and will not bring forward legislation at Finance Bill 2009. The Government will keep this issue under review."**

What does this mean?

The further delay of any new legislation is good news, but it is frustrating that this only provides a further postponement and that the issue of potential income shifting anti-avoidance legislation is still a possibility.

This means there continues to be uncertainty for both family partnerships and companies.

This uncertainty is exacerbated by the interaction between the original draft income shifting legislation and other tax issues. For example if income shifting legislation is introduced it may be possible to take value out of a business by taking a property off balance sheet and charging rent to the business. The ownership of the property could then be changed to the spouse with less involvement in the business. Whilst potentially good news for income tax efficiency, this is likely to have negative implications for both Inheritance Tax Business Property Relief and Capital Gains Tax Entrepreneurs' Relief.

Conclusion

Previously we have advised that changes are on the way, however this is no longer absolutely



certain. It is certainly no vote winner.

It seems reasonable to assume that the proposed legislation will not be introduced in the current economic climate. However as soon as a recovery begins, which the Government have optimistically predicted will be in 2010, we need to be wary of the proposed legislation resurfacing.

It is hoped that any changes will be pre-announced to give affected businesses a chance to make any changes necessary to avoid being caught by the new legislation. However there is no guarantee of this. We recommend that family businesses continue to evaluate their position with an eye to the likelihood that new income shifting legislation will be introduced in due course. Speak to us about it sooner rather than later in order to make best use of the current very flexible position, and to plan for an optimum arrangement going forward.

Tax Prize Draw - the lucky winner is...



...David Harrison, who will be jetting off for a luxury weekend in Amsterdam. David, a retired partner of a large firm of solicitors, was pleasantly surprised when he heard the news.

The draw took place at our Cheltenham office and Bryan Redpath, assistant coach of Gloucester Rugby Club and former Scotland scrum-half, pulled out the winning ticket.

This is the fifth year of the tax prize draw which was launched to encourage clients to submit tax return information early. In the past, prizes up for grabs have included a trip to Paris and New York.

Left to right: Mark Tibbert, Tax Manager, Bryan Redpath, Gloucester Rugby Club, Adrian Randle, LLP Partner and head of Corporate Tax and Helen Richmond, Tax Manager

Benefits of paying tax early

Given the problems faced by many financial institutions at the moment you may be looking for somewhere to put your cash. If this is the case it may be worth considering paying your tax bill early and possibly earning interest of up to 2.5% from HMRC.

To do this you can either;

- pay tax on your account prior to the due date, which will earn you interest currently at a rate of .75%; or
- you can purchase a Certificate of Tax Deposit (CTD) and then when this is used to pay your tax, you will earn interest (albeit taxable interest) at the following rates:

Deposit	Period held	Interest rate
< £100,000	0 - 12 months	0%
> £100,000	0 - 1 month	0%
> £100,000	1 - 3 months	2.5%
> £100,000	3 - 6 months	2.5%
> £100,000	6 - 9 months	2.5%
> £100,000	9 - 12 months	2.25%

Sadly, purchasing a CTD does not mean that you can forget your tax payment due on 31

January. At that time you will still need to request the CTD be set off against your liability.

If you later encash your CTD, rather than pay off a tax liability, the above interest rates are halved.

The above interest rates are linked to the Bank of England base rate, therefore if, as expected, the Monetary Policy Committee reduce interest rates further, these rates will also fall.

If you would like to find out more about CTDs you can either speak to your usual Hazlewoods contact, email tax@hazlewoods.co.uk or go directly to www.hmrc.gov.uk/payinghmrc/cert-tax-deposit.htm

How can developers avoid the extra VAT charges on property rentals?



This article follows on from the one in October's issue of Talking Tax in which we described the VAT implications of developers letting out some of their housing stock, whilst they are unable to sell it at a reasonable price.

To avoid the potential claw-back of input VAT when developers let out property that they had previously intended to sell, there are several options.

Sell it to another group company

You could consider selling it to another group

company, therefore avoiding the VAT problem. It would need to be taken on in the acquiring company as an investment asset, as it is difficult to see how it could still be shown in stock and given this the disposing company would be subject to a tax charge.

It may be possible to avoid any Stamp Duty Land Tax (SDLT) charge by claiming group relief, but a liability could arrive if the property is then sold within three years.

Buy the property personally

It may be that a buy to let mortgage in personal

names is cheaper finance than within a corporate entity.

You would still have the same corporation tax charge on disposal, as it would be taxed as if sold at market value. However, one of the draw backs with this route is that SDLT is payable on the value of the property, which could be at 4%. Or is it?

With careful planning, you can extract property from the company balance sheet with no SDLT liability. Fees for doing this are 1% of the property value. This may be a small cost when factoring in the cheaper finance and VAT savings.

Another drawback with this route is the tax on any rental income. You need to consider the

- tax rate of the company compared to the individual;
- cost of extracting cash from the company to the individual; and
- efficiency of repaying the debt through the company as opposed to personal borrowings

You must also be aware of the possible risk that HMRC challenge that you have only obtained the property with a view to making a profit, rather than it being an investment. This could mean a future disposal incurs a 40% income tax charge (and maybe national insurance liability) rather than an 18% capital gains tax liability, if it is treated as an investment property.

Summary

Each case must be considered on its own facts. For some, the VAT hit may be the least costly option and it should just be accepted as an unfortunate consequence of the current market. For others, moving the property to another owner, be it a corporate or individual, may well produce significant savings.

New Year 'Wealthcheck' from **Hazlewoods** **Financial Planning LLP**

Now all Christmas festivities are over, many people are once again turning their attention to their finances.

Recent months have seen liquidity problems for our high street banks, stock markets falling dramatically, interest rates reducing and talks of severe recession.

Naturally, this is causing people great concern, both where to invest their money safely and at the same time obtain a reasonable return.

With this in mind, Hazlewoods Financial Planning LLP are running a series of **free** seminars and surgeries designed to help people make the most of their savings and investments, along with advice regarding Inheritance Tax planning.



Seminar Dates

The seminars will run for 2 hours at our Staverton offices on the following dates:

Tuesday 27th January, commencing at 10.30am and 2.30pm

Thursday 29th January, commencing at 10.30am and 2.30pm

If you would prefer an individual discussion, we will also be running 30 minute surgeries at our Windsor House offices in Cheltenham, times and dates as follows:

Tuesday 3rd February 2-6 pm

Thursday 5th February 2-6 pm

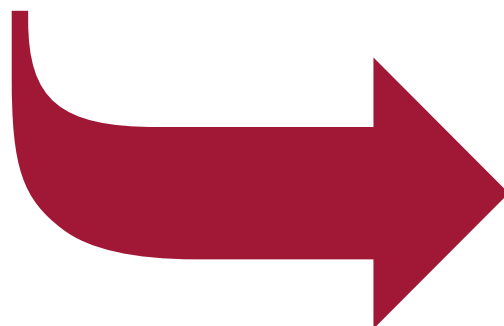
Places for all days will be allocated on a first come first served basis and it is expected that demand will be high, therefore we suggest booking early.

Please ring **01242 682141** to reserve a place for whichever event best suits your circumstances.

Next time - **Tax planning** with **Limited Liability** **Partnerships**

LLPs can be very useful in tax planning. In our next issue we will be discussing the tax advantages of using an LLP structure for;

- new business ventures,
- corporate reorganisations, and
- how they can be incorporated into existing structures



Key Tax Dates coming up

Monthly Deadlines

1st	Due date for payment of corporation tax liability for accounting periods ended nine months previous (apart from companies subject to the quarterly instalment payment (QIP) regime).
7th	Due date for VAT return and payment for the month/quarter ended at the end of the penultimate month, if paying electronically.
14th	Due date for quarterly instalment payments for large companies with a year ending 15, 12, 9 and 6 months before the end of the previous month.
19th	Due date for payment of PAYE/NIC/CIS deductions and student loan deductions for the month ended on the 5th of this month, where paying by cheque.
19th	Due date for submission of CIS300 (CIS monthly return) for the month ended on the 5th (nil payments must also be advised to HMRC). Statement of deductions must also be given to each subcontractor.
22nd	Due date for payment of PAYE/NIC/CIS deductions and student loan deductions for the month ended on the 5th of this month, where paying electronically.
Last day	Filing deadline for corporation tax return, computation and accounts for accounting periods ended exactly a year previous.
Last day	Filing deadline for VAT return and payment due for month/quarter ended at the end of the previous month, where paying by cheque.
Last day	Intrastat declaration return due for month ended at the end of the previous month.

January 2009

1st	New advisory fuel rates come into force.
14th	Due date for income tax for the CT61 (income tax on loans) quarter to 31 December 2008.
31st	Filing deadline for 2007/08 Self Assessment income tax return.
31st	Due date for payment of balancing payment of income tax and class 4 NIC and capital gains tax due for 2007/08.
31st	Due date for payment of first Self Assessment payment on account for 2008/09.

Final reminder for 2007/08 tax return information

February

2nd	£100 penalty if 2007/08 Self Assessment tax return not yet filed.
2nd	Filing deadline for P46 (Car) (notifying company car changes) for the quarter ended 5 January 2009.
14th	Final date to submit a deferral request for class 2 and class 4 NIC for 2008/09.
28th	Last date to pay balancing payment of income tax and class 4 NIC and capital gains tax due for 2007/08 to avoid an automatic 5% surcharge.

March

31st	Last day of the financial year 2009 for corporation tax purposes.
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April

5th	Last day of 2008/09 tax year (last day to use 2008/09 tax exemptions)
6th	First day of 2009/10 tax year.
14th	Due date for income tax for the CT61 (income tax on loans) quarter to 31 March 2009.
20th / 23rd	Interest will begin to accrue on unpaid PAYE/NIC for 2008/09
30th	Due date for normal annual adjustment for VAT partial exemption calculations (for monthly returns)

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This newsletter has been prepared as a guide to topics of current financial and business interest. We strongly recommend you take professional advice before making decisions on matters discussed here. No responsibility for any loss to any person acting as a result of this material can be accepted by us.

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