

December 2008

## THE PRE-BUDGET REPORT

The Chancellor's Pre-Budget Report last month did contain some genuinely good news for small businesses. Firstly, it confirmed that the Finance Bill 2009 will not include the controversial 'income shifting' legislation, which would have had a major impact on many family businesses.

The background is that in July 2007 the long-running *Arctic Systems* case was brought to a final conclusion by the House of Lords deciding that, where husband and wife are shareholders in a family company, each is taxable on the dividends he or she receives, even if one spouse does most or all of the work which earns the company's profits. In *Arctic Systems* itself, husband and wife were equal shareholders in a company, through which the husband conducted his full-time business as a freelance computer programmer. The wife's input was limited to part-time administration and support. The Revenue claimed that all the dividends, whether paid to the husband or the wife, should be taxed as the husband's income, because he had earned the money, but the House of Lords rejected this argument. The real point at issue, of course, was that splitting the dividends between husband and wife reduced the average rate of tax paid on them.

The basic principle of the proposed legislation was that where, as in *Arctic Systems*, the spouse who actually earns the money sets up or agrees to arrangements which 'shift' part of the profits to the other, those arrangements should be effective for tax purposes only to the extent to which the 'shifted profits' represent a reasonable rate of reward for the recipient's contribution to the business. This 'anti-income shifting' legislation was originally scheduled for implementation in April 2008, but was withdrawn for further consultation when it was argued that the central test – 'What is a reasonable rate of reward?' – was so subjective as to be unworkable.

It had been said that revised proposals would be brought forward for implementation in April 2009, but in the event the Government has decided, 'given the current economic challenges', to postpone legislation at least until April 2010. This means that, at least for 2009/10, the House of Lords decision remains in force and family companies can, with confidence, continue to split their dividends equally between husband and wife.

### **Tax on small company profits**

Secondly, the Chancellor announced that the small companies rate of corporation tax, due to rise to 22% in April 2009, will be held at 21% for a further year.

### **Relieve for travel expenses claims**

Thirdly, the Government had made it known that it was considering tightening up the rules governing tax relief for travel-to-work expenses incurred by employees and directors. Generally speaking, these rules are anyway very restrictive, but the Government still thought that they could be too generous for some employees and contractors working through agencies or ‘umbrella companies’. It was also feared that the attack could be widened to include individual contractors working through traditional one-man or one-woman companies.

However, the Pre-Budget Report states that the Government has now decided to allow the existing rules to continue for the time being, but to devote additional HMRC resources to ensuring that the existing rules are properly complied with. There have been suggestions that some agencies have allowed contractors to claim inflated travelling expenses as part of their remuneration package.

### **Some flexibility for tax payments**

Fourthly, in his Pre-Budget Statement to Parliament the Chancellor promised that: ‘From today, HMRC will enable firms facing difficulties to spread their tax on a timetable they can afford. This will cover all business taxes – VAT, corporation tax, income tax and National Insurance.’

Requests for time to pay will be considered by HMRC’s new ‘Business Payment Support Service’, which has said that it will ‘discuss payment options to help [*traders*] deal with temporary cashflow difficulties’. It suggests that it will usually be best for the trader to telephone the new ‘Business Payment Support Line’ (0845 302 1435) shortly before the payment is due. Once an arrangement has been made, late payment surcharges will not be levied, but interest will still continue to accrue in the usual way.

We would suggest that, before contacting HMRC, the trader should analyse the exact nature of the problem. Waiting for a delayed payment by a major customer, for example, might well create ‘temporary cashflow difficulties’, for which asking for time to pay would be an appropriate solution. However, if the underlying problem is that there has been a sharp reduction in sales, which because of the economic downturn may last for some time, other action may be more appropriate, and more effective. For example, the proprietor of an unincorporated business might wish to amend his payments on account of income tax on his profits (due 31 January and 31 July 2009). In some circumstances, extending his accounting year to a later date in the current tax year might reduce the assessment.

## **Relief for trading losses**

Fifthly, the Chancellor announced an extension of the general tax relief for trading losses. Broadly speaking (and the rules are in fact very complicated), under current law a trader who makes a loss may set it against profits assessed for the previous year (and so obtain a tax repayment). If the loss is larger than the profit assessed the previous year, the excess can be carried forward, for set-off against the profits of the next year in which a profit is made. For example, if a loss of £20,000 is made in the current year, 2008/09, and the assessment for 2007/08 was £15,000, the assessment for 2007/08 will be reduced to Nil and the balance of the loss, £5,000, can be carried forward for set-off against the profit of 2009/10.

The extension announced by the Chancellor is to allow a loss made in 2008/09 to be carried back for two further years – to 2006/07 and, if necessary, 2005/06. However, the total loss which may be relieved in the earlier two years combined is capped at £50,000.

An important point is that the new relief applies only to the loss made in 2008/09, which in the usual case means the loss for the year to the accounting date falling in the 2008/09 tax year. If the accounting date is (say) 30 June, that will mean the year to 30 June 2008, which was of course before the recession began to bite. At present, there is no indication that the new relief will be further extended to cover losses made in the accounting year ending in 2009/10. Subject to sight of the proposed legislation, it may be possible to obtain relief by extending the accounting date so that it falls later in 2008/09.

In any case, the loss relief rules are so complex that individual advice will be required on the steps to be taken to maximise the tax relief available.

There will also be a parallel relief for companies, which will apply to losses incurred in accounting periods ending between 24 November 2008 and 23 November 2009.

## **CAPITAL ALLOWANCES ON MOTOR CARS**

Hitherto there has been a special rule limiting the capital allowances that can be claimed on motor cars costing more than £12,000, to £3,000 a year (and also restricting tax relief for lease rental payments on such cars).

For cars purchased on or after 6 April 2009 (1 April 2009 for companies) this rule will be replaced by a new rule restricting capital allowances on cars with CO<sub>2</sub> emissions above 160g/km, to 10% a year (instead of the usual 20%). Lease rental payments on such cars will be subject to a flat-rate restriction of 15%. Importantly, these new restrictions will apply to taxis and hire cars, which were exempt from the old rules.

In some cases, there may now be an advantage in buying a new car before April, and in others in leaving the purchase until later. Because of the wide range of factors to be taken into account, we can only suggest that clients contact us for individual advice.

## PERSONAL TAX PROPOSALS

Anyone who has studied the detailed figures may have been surprised to notice that the basic rate band was extended from the first £34,800 of taxable income in 2008/09 to £37,400 in 2009/10 – an increase well above inflation. However, this was in fact the final instalment of a reform of personal taxation first announced in the Spring 2007 Budget. The counterweight is an even bigger increase in the National Insurance Upper Earnings Limit (the level of earnings at which directors' and employees' Class 1 contributions fall from 11% to 1%, and self-employed people's Class 4 contributions from 8% to 1%). Broadly speaking, self-employed people will see no overall gain and directors and employees will be a little worse off. The only gainers will be people over State Pension age (65 for men, 60 for women), who are not required to pay National Insurance contributions, and some people with earnings below the Upper Earnings Limit, topped up with investment income.

The Chancellor also presented what were in essence outline Budgets for 2010/11 and 2011/12. The first proposal is that, for 2010/11 and future years, people with an income over £100,000 a year will be entitled to only half the usual personal allowance, and those with an income over £140,000 will not be entitled to a personal allowance at all.

The second is that neither the basic rate band nor the personal allowance will be increased for 2010/11, because HM Treasury expects there will be zero inflation in the year to September 2009. The basic rate band will then be frozen for 2011/12 and the personal allowance will be reduced by £130. For 2011/12 and future years, there will be a new 45% rate of tax on income over £150,000 a year.

Finally, also from 2011/12, the National Insurance primary threshold – the income level at which employees' contributions, and self-employed people's Class 4 contributions, become payable – will be increased by about £12 a week, to align with the income tax personal allowance. At the same time, the employee's contribution rate will rise from 11% to 11.5% (1% to 1.5% for earnings over the Upper Earnings Limit), the employer's from 12.8% to 13.3% and the self-employed Class 4 rate from 8% to 8.5% (1% to 1.5% for earnings over the Upper Earnings Limit). Shortly put, employees earning less than about £20,000 a year will be paying lower contributions and those earning more will be paying higher contributions. For self-employed people the break-even point is lower – around £16,500.

All that said, of course, there must be a General Election before April 2011, and no-one can really know what the economic condition of the nation will be by then, so the proposals for 2011/12 are certainly not set in stone.

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*This newsletter deals with a number of topics which, it is hoped, will be of general interest to clients. However, in the space available it is impossible to mention all the points which may be relevant in individual cases, so please contact us for personal advice on your own affairs.*

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