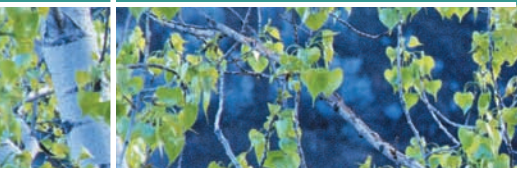
2011

SPRING NEWS



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Any rabbits in Mr Osborne's hat?

George Osborne has changed a few things since he became Chancellor. One of the more welcome is setting the date of the Spring Budget months in advance. It didn't inspire confidence in Mr Brown or Mr Darling that they never seemed sure when they would be ready to make their key annual statement about tax and finance. Wednesday 23 March was fixed in November, at least two months earlier than in recent years.

Years ago, no-one knew what the Chancellor would do in a Budget speech, from the little things – how much on beer and cigarettes – to the big economic policies. It's a good thing that there are fewer surprises now. We were told most of the tax rates and allowances for the next tax year in December, and we know about quite a few of the proposed rule changes because they've been published for public comment. Some of the coalition government's plans have been set out for several years ahead.

With luck, that makes for better laws, and it means there's less reason for rushed decisions either before or after the Budget. We can see what's coming, so we can plan for it. But it does reduce the drama, the sense of occasion. Mr Darling seemed to revel in the image of 'steady and boring' – we have yet to see whether Mr Osborne will want to create more of a stir.

If he does, will he be austere in the face of the deficit, or will he find something to cheer us up? Government borrowing is still a long way from being under control, but there's talk of easing some of the cutbacks to help the economy or promote Mr Cameron's Big Society idea. Whatever the Chancellor pulls out of his hat – or his red box – we will be here to help. ●

Relaxed association

Companies that make small profits – up to £300,000pa – pay a lower rate of corporation tax. From 1 April 2011, it will be 20% against 27% for a company making over £1.5m, with a complicated calculation for those in between.

If two companies are 'associated', they have to split the limits between them, so they pay higher rates on lower profits. Companies are associated if the same people control them. The rule stops one person dividing £1.5m between 5 companies and paying 20% on all of it.

1 April 2011 sees an important change to these rules. Up to now, an individual has been treated as owning shares of close relatives and partners. If the companies had nothing else to do with each other you could ignore some relationships, but two companies separately owned by a married couple would always have to split the limit. From 1 April, relatives' shares will only be counted if there is 'commercial interdependence' between the companies. That's a welcome change: it means a small business won't be penalised because of a random connection.

Meanwhile, a case has highlighted the rule that 'control' isn't just about shareholding – it includes being entitled to more than half the assets. Someone who holds less than 50% of the shares, but has made a large loan to the company, is likely to be treated as controlling it. If they also control another company, the two will divide the profits limits, even if they are completely separate businesses.

If you have shares in more than one company, it's important to think about the tax rates that they will pay. We can help you count the associations and tell you what the rule change means. ●

Don't mince words

Employees have the right not to be unfairly dismissed. That means it's vital for an employer to follow the right procedures when sacking someone – particularly if disciplinary hearings are involved.

In a recent case, an employee was responsible for preparing bankings. She recorded giving £3,400 in cash to a courier, but the bank said it only received £400. She was suspended during an investigation, and the employer told her there would be a disciplinary hearing. Maybe because an allegation of dishonesty was considered so serious, they didn't state clearly that she was being accused of stealing – the hearing was only about 'discrepancies in banking'.

The Employment Appeals Tribunal held that this was unfair, and she might be entitled to compensation. If she had known what she was accused of, she might have presented a different defence. An employer has to be clear about what the employee is supposed to have done or not done, and whether this is considered to be due to poor performance or deliberate misconduct. Anything vaguer than that is likely to be unfair. ●

Give early

When the basic rate of income tax was cut from 22% to 20% on 6 April 2008, charities protested that they would end up with less money from Gift Aid relief – they can claim back the basic rate paid on a donation, and that fell from 22/78 to 20/80. To compensate them, the Government provided for a 2% supplement to be paid on donations up to 5 April 2011. If you are thinking of being charitable around the end of this tax year, the charity will thank you for giving before that date.

The effect on the giver is different – if you are a 40% taxpayer in one year and a 50% taxpayer in the other, you will save more tax if you make your gift when your income is higher. ●

File under 'e'

E-filing is coming: from April, corporation tax returns and accounts will have to go to HMRC electronically, and so will most PAYE forms such as starters and leavers. In many cases, the new system turns out to be better, easier and quicker than the old one, but there is some initial learning – and a few procedures – to go through first.

Everyone needs to be ready for the new systems in good time. If you want to know what these changes will mean to you and your business, we can advise you. ●

A tax on houses

'An Englishman's home is his castle', as the old saying goes. There are plenty of people who think the portcullis and battlements should keep out the taxman. It can be a shock to find that HMRC want capital gains tax on the sale of your bricks and mortar.

In three recent cases, the tax tribunal found no evidence that the taxpayers had lived in the properties in a settled way – they hadn't made it their home, even if they had lived in it briefly. The CGT exemption is only for a 'residence', and that means you have to have an intention to live there for a while. How long, no-one knows – but if you intend to move on as soon as you move in, you don't qualify.

Using part of your house exclusively for business, or renting it out, can also upset the CGT exemption. If you are expecting the sale of a house to be tax exempt, it's worth checking that you aren't in for a nasty surprise. We can advise you. ●

20:20 vision

The standard rate of VAT is now 20%. That's where it's going to stay for a few years, according to Mr Osborne – at least that means we won't have to cope with another rate change for a while. There were plenty of problems around 4 January – should I charge my customers 17.5% or 20%? If I agreed a price when the rate was 17.5%, can I increase it afterwards? My supplier's invoice shows 20% when I think it ought to be 17.5% – should I argue, or just pay it and claim the money back from HMRC? If any of these doubts are still unresolved, we will be happy to try to clear them up for you.

The simplified schemes for small businesses are not so simple when the rate changes. If you use cash accounting, your method may be to put 7/47 of the receipts in the cash book on your VAT return. That doesn't work if anything was outstanding on 4 January 2011 – if you put 17.5% on the invoice, you pay 7/47 to HMRC even if the money comes in after the rate has gone up. So you need to do a complicated calculation until the last December debtor has paid.

If you use the Flat Rate Scheme, the same applies – your flat rate will have changed, but you still apply the old rate to debtors when you receive them. It's also worth checking that the scheme is still in your favour at the new rate – it's possible that you should consider opting back into the normal rules of VAT.

At least 20% is easier to work out than 17.5%. For all the other problems, we're here to help. ●

What's in a title?

The title 'company director' conjures up for some people the Rolls, the cigar, the big bonus. For most directors, it means meetings, more meetings, and heavy legal responsibilities. If your company goes bust, your actions can be scrutinised to see if you should have done more to protect the creditors. If you acted wrongly, you can be disqualified as a director, or even made liable for debts.

For those reasons, becoming a director isn't something you want to do lightly. You certainly don't want to be one without knowing about it. In two recent cases, individuals were directors of one company, and that company was named as a director of several others. A company can't turn up to board meetings, of course – the individuals acted as directors on their company's behalf.

So, did that make them personally responsible? The judges said yes and no – one of them had filled the role of a director, but others hadn't. It depends on the particular facts and on how you behave. If you are involved in running a company, you have to be careful – if you are pulling the strings, you may be tied up in them even if you don't have the formal title. ●

Do it yourself

New houses are zero-rated for VAT. That means that the builder can get back the VAT on the bricks and mortar, and doesn't have to charge the customer anything. If you have a piece of land and you decide to build your own house, there's a scheme that's supposed to put you in the same position. You can get workmen to supply construction services VAT-free – legally, not as a dodgy cash deal – and you can claim back the VAT on the materials from HMRC.

The problem is that there are a lot of conditions for the claim. Dozens of HMRC's refusals to pay end up in the tax tribunal, and there must be many more where the claimant gives up sooner. Building your own house is a long and stressful business, and finding out at the end that you won't get the VAT refund you budgeted for must be maddening.

Part of the problem is that DIY builders are not in business and they may not be used to reading VAT rules or filling in VAT forms. If you are thinking of this kind of project, it's worth making sure that you understand all the rules. We'll be happy to advise you. ●

Holiday entitlement

Rent is usually treated as investment income, which has some tax disadvantages compared with a trade. Traders get better tax relief for losses, and usually pay a lower rate of CGT when they sell business assets at a gain. For many years, the rules on 'furnished holiday letting' have allowed people who run short-term rental businesses to be taxed as if they were trading. Recently HMRC realised that properties anywhere in Europe had to be accepted as eligible – it wasn't possible to restrict the relief to the UK.

The last government decided to abolish the special treatment of FHL, but Mr Osborne has decided instead to keep it with some restrictions. It will still be necessary for most lettings to be no more than 30 days, but the time the property has to be available for letting will increase from 140 to 210 days a year, and the time it is actually let will go up from 70 to 105 days. To give people a chance to adjust, these new limits will come in on 6 April 2012. There will be a 2-year period of grace for those who can't increase the actual letting immediately but are clearly making an effort to do so.

It has been possible to claim FHL losses to get a tax reduction on other income. That's going from 6 April 2011 – any rental loss will only be relieved against rental income on another property.

One of the big benefits of FHL is the ability to claim Entrepreneurs' Relief on a gain – an effective CGT rate of 10% rather than 18% or 28%. If you own a FHL property which won't qualify under the new rules, it will be important to think about the potential increase in the CGT liability.

We'll be happy to advise you about the consequences of these changes. ●

All in the contract?

If you pay a contractor to convert your loft, every penny you pay is VATable (as long as the builder's honest). Often the workers who do the plastering, plumbing and electrics are self-employed sub-contractors who wouldn't charge you VAT because their business as individuals isn't big enough. So the contractor takes the non-VATable labour and makes it one big VATable supply.

A company tried to get around this by saying in its contracts that it was only a 'project manager'. It still collected all the money from the customer, but didn't put it all on its VAT returns – it reckoned the customer now had separate contracts with all the labourers, and when the company paid them, it was just handing on the customer's money. It didn't belong to the project manager. If that had worked, it would have saved a lot of money.

The trouble is, it didn't work. The taxman argued that nothing had changed: the customer still believed he was getting a loft from the company, not a series of separate contracts with different people. The argument has gone through several levels of appeal in the courts, but at the moment HMRC are winning – the tax tribunal confirmed an assessment of well over £1m.

The correct VAT and tax may change if the contract is different, but it's not just what's written in the small print – it's what everyone believes the agreement is. Here, the tribunal didn't think the company's contract reflected the true bargain between the parties, and agreed with HMRC that it should be charged to VAT in the normal way – as a single contract to supply a loft conversion.

If you are in doubt about the VAT or tax treatment of your contracts, we will be happy to advise you. ●

Where am I?

If you do business abroad, or your customers are foreign, you have to worry about the 'place of supply' rules for VAT. Are you supposed to charge UK VAT to foreigners, or do you have to deal with the local tax authorities in another country? Or can you treat your sales as not VATable in the UK, and get your foreign customer to account for local VAT using the 'reverse charge'?

There were big changes to the rules for business-to-business services on 1 January 2010. These meant that more sales were covered by the reverse charge, which is simpler than the other two options, but such sales now have to be reported to HMRC on a quarterly Sales List.

There's been a further change on 1 January 2011. In 2010, supplies of entertainment and educational services were still dealt with where the supply physically took place. That could mean a requirement to register in the other country if you travelled there to give a concert or a lecture. Now, business-to-business supplies of this sort are 'where the customer belongs', rather than 'where they happen', so the reverse charge applies.

There is an exception for supplies of a right of admission. So if you are the entertainer supplying your services to the promoter of an event, your supply is reverse charged. If you are the promoter selling tickets, the supply is 'where the event is', even if the customers are in business.

If you want to check that you are doing the right thing with foreign supplies, including filing Sales Lists, we can help. ●

Horses for courses?

EU law allows member states to charge a lower VAT rate on food for human consumption – and that includes animals while they are still alive, as long as they are used for meat. In the UK, we zero-rate food, but some other countries charge 5%.

The European Commission is taking action against several countries for applying the lower rate to horses. In some places they do eat horsemeat, but not in Ireland...

Maybe the old expression 'I could eat a horse' is about VAT avoidance rather than hunger. ●

Research costs?

Claiming the cost of a holiday as an expense is one of those well-tried ideas that the taxman will argue about. The principle is clear: if you have to go on a business trip and stay on for the weekend, you can claim the cost of the business trip. If you go on holiday and arrange to do some business while you are there, you probably can't claim any of it. Telling the difference is sometimes difficult.

A journalist interviewed the man who wrote 'A Year in Provence' and thought 'I could do that'. So he moored a boat in the South of France and lived on it for a year, busily writing. He claimed half of the cost of everything for a year – he reckoned that allowed for the private element, and 50% was a fair reflection of the research for his book.

The tax tribunal would have none of it. The trouble is that expenses have to be 'wholly and exclusively' for the business. As soon as you claim 50% you are admitting that they aren't. Perhaps the experience will give him material for a new book.

If you want to be sure what expenses can validly be claimed against your profits, we can help. ●

That's entertainment

The taxman takes a dim view of 'entertaining'. There can be arguments about what's a proper business expense, and staff parties get special treatment, but the general rule has been there for years: no deduction for profits or for VAT for taking contacts out to lunch or to a show. People with long memories may remember that we used to be allowed to spend money on foreign customers, in order to encourage exports. But that was abolished in 1988.

Now a case in the European Court has pointed out that UK rules which block VAT on genuine business expenses couldn't be tightened after we signed up to an EU Directive in 1978. That means that we should have been allowed to claim VAT – if not a corporation tax expense – on entertaining foreign customers all these years. HMRC have accepted this as a principle, but you can expect them to argue about the facts – they will only let you go back four years, and they will want evidence that there was a proper business purpose behind the expense. They don't think that a 'jolly' qualifies for any deduction at all.

If you have foreign customers and you think you might be due a refund, we will be happy to advise you. ●

Pension changes

Two years ago Mr Darling proposed to limit pension relief for people with incomes over £150,000. The new rules would be complicated, and they would only kick in on 6 April 2011. We've been dealing with even more complicated rules which were aimed at people who paid big contributions in advance to beat the restriction.

Mr Osborne has decided to make a different change. In some ways it's simpler – the basic idea is that anyone can put £50,000 a year into an approved pension scheme and enjoy tax relief at their marginal tax rate, whether that's 20%, 40% or 50%. That will apply from 6 April – up to then, we still have the rules about large contributions that Mr Darling left us.

For the great majority of people, the new rules won't pose a problem – £50,000 covers their annual contributions. For people who put in more, it will be important to check the consequences. The most difficult cases are people lucky enough to be in final salary employer schemes. If they get a pay rise – say a big promotion – their pension entitlement will jump, and the rules will tax them as if their employer made a big payment to secure that increase.

If you are one of the people affected, we can explain how to make the most of the new rules. Meanwhile, anyone with an income over £130,000 who is thinking of paying pension contributions totalling over £20,000 in the year to 5 April 2011 should take advice on the application of Mr Darling's rules. ●

The privileged few

Legal professional privilege is the rule that no-one – not a court, not the police, not the taxman – has the right to demand to see advice given by a lawyer to a client. The client can tell the truth to the lawyer because the lawyer can be trusted not to pass it on. The client's confidence helps the lawyer give the best advice.

Two recent cases have shown that privilege is an old-fashioned rule that only applies to limited circumstances. The European Court ruled that advice given by an in-house lawyer working for a company didn't have privilege – it was company information like any other. Only an independent legal adviser qualifies.

The Court of Appeal then decided that privilege couldn't apply to advice given by a firm of accountants, even if it was about tax law. The client could get the same advice from solicitors and enjoy privilege – but it was the nature of the firm, not the nature of the work, that protected the information.

In these days of Wikileaks, of course, it may simply be safer to assume that nothing is secret and everything you say or write may be held against you... ●

EISy money

In difficult economic times it is important to look at anything the government offers as an incentive for investment.
The Enterprise Investment Scheme aims to encourage people to put money into small unquoted trading companies – a risky investment, of course, but sweetened by the offer of a 20% income tax rebate on cash introduced and the possibility of making tax-free capital gains in the long term.

There are many conditions to be satisfied, but the basic idea is that an individual has to subscribe for new share capital in the company, and must not own more than 30% of it afterwards. The maximum investment is £500,000 a year, and you can claim your tax rebate in the previous year, accelerating the cashback.

EIS isn't available to people who have run or owned the company in the past, so it's aimed at outsiders being brought in – a 'business angel' can claim EIS relief on a capital injection and then become a director. However, the scheme isn't restricted to business angels. If four individuals want to set up a company together – less than 30% each – they can do so using the EIS and enjoy a tax rebate.

If you think you might be able to bring in an investor who qualifies for EIS – or if you and three friends want to set up a business – we can look at whether you can claim this attractive relief. ●

Called to account

If you are late filing your annual accounts at Companies House, you are likely to have to pay a penalty. It's possible to plead an excuse, but the Adjudicator who examines complaints against Companies House only upheld 9 complaints out of 325 about late filing penalties. They expect companies to take the appropriate steps to file on time, and about the only acceptable excuse is for a complete catastrophe to strike a sole director at a time which makes it impossible to file. You have been warned! ●

This newsletter is written for the benefit of our clients. Further advice should be obtained before any action is taken.