

AUTUMN 2010

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Keeping on top of
potential threats to
your business

PERSONAL PLANNING

Minimise your Capital
Gains Tax liability

ON THE RIGHT TRACK

IN BRIEF

Crystal Palace saved
with Creaseys' help

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EMMA ROBERTS - FOREWORD

Welcome to the latest edition of 'On The Right Track'. This year has certainly been an interesting one so far with an Election, the dawn of a new Coalition Government, two Budgets to contend with - and another sorry showing by England's footballers in the World Cup!

The new Government's Emergency Budget on 22 June did a fair amount to encourage business, but the tax regime for individuals remains harsh, with 50% and 60% tax rates meaning that many clients are now focusing on ways of mitigating their own and their family's tax position.

Many of the measures announced in this most recent Budget – including the 55% increase in Capital Gains Tax and changes to corporate tax - are outlined in this edition of 'On The Right Track'.

Twelve months ago, I said there was still a sense of economic uncertainty in the UK and this remains, with the Governor of the Bank of England, Mervyn King, saying recently that the UK faces 'choppy' waters ahead on its path to economic recovery.

Pundits predict that the UK economy will keep growing this year, but as the Government's cuts in public spending hit home and the tax take increases, growth may be slower than anticipated. The spending cuts are already hitting confidence and we are preparing to help clients and their employees with the effects of any tax grab.

There is though, still activity in the market for the right deal. Since the last edition of 'On The Right Track', we have been pleased to be involved with some high profile transactions. We assisted Martin Long, founder of Churchill Insurance, with advice on the tax issues associated with his acquisition of an interest in Crystal Palace Football Club. We also worked closely with Cath Kidston on tax planning associated with the company's share sale earlier in the year. Cath said after the sale: "I couldn't have been happier with my service from Creaseys."

There has also been a substantial increase in work for trusts and with this in mind, we have recently recruited Stephanie Parker to take charge of this growth area. Let Stephanie know if you need any help or guidance.



Creaseys' Charity of the Year for 2010 is The Pickering Cancer Drop-in Centre in Tunbridge Wells (www.pickeringcancercentre.org.uk). We are proud to be working so closely with Pickering, which does some amazing work, providing support and advice to people with cancer and those affected by it.

A recent fundraising event saw a team from Creaseys take part in Dragon Boat Racing at Bewl Water, near Lamberhurst. This, combined with other activities, means that we will raise several thousand pounds for the charity over the 12 months. Thank you for your support of these events.

Finally, Creaseys is a firm which moves with the times and this year has seen the launch of our new branding. A subtle reinterpretation of our previous identity, we believe our new brand reflects our proud heritage, but also positions us as a modern firm equipped for the challenges of today. We very much hope that you like it.

Enjoy this edition of 'On The Right Track' and please feel free to get in touch with any member of the team if you have any questions or need advice on any of the issues discussed within it. We are very happy to be of help to you in these challenging times.


Chief Executive

IN BRIEF



IN BRIEF

TO LET OR NOT TO LET?

As expected, a consultation document on furnished holiday lettings (FHL) was issued on 26 July 2010 and applies to properties in the UK and EEA. These are some of the changes proposed by the Government, to take effect from April 2011.

- The length of time actually let to the public is to be increased from 70 days to 105 days per year.
- The time the property must be available for letting in the year is to be increased from 140 days to 210 days.
- Losses made in a FHL business are to be limited to offsetting against income from the same FHL business and not against any other income and gains as at present.

The good news is that a qualifying FHL business:

- Will continue to be able to claim a tax write-off for furniture and equipment used for the purpose of the FHL business.
- Will retain the favourable Capital Gains Tax (CGT) 10% rate on disposal and the ability to roll over gains from certain assets into a FHL business.
- Will still qualify as relevant earnings for pension purposes.

One last thing to bear in mind is the Inheritance Tax exemption that may also arise in certain circumstances with careful planning.

FHL owners anticipating losses may wish to accelerate expenditure before the changes in April 2011.

PUT YOUR TRUST IN STEPHANIE

Stephanie Parker recently joined Creaseys in the newly-created role of Trust Manager within our Private Client practice. In her new role, she will be working closely with Creaseys' clients to help them with the planning and administration of trusts for people based both in the UK and overseas. She will identify opportunities to help clients in a variety of ways, through estate planning, succession planning and tax mitigation.

Stephanie brings with her wide experience in working in this area and joins the firm from UHY Hacker Young Chartered Accountants in London. She has also worked at firms including Reeves + Neylan in Canterbury and Chavereys in Faversham.

"I am delighted to have joined Creaseys and like the fact that I am dealing with some really good quality work but locally in Kent," says Stephanie. "I have already met a number of the firm's clients and am looking forward to also building new business for our trust department. My goal is to make Creaseys the adviser of choice in the south east when it comes to trusts."



Stephanie Parker

Trusts can be of great benefit, not only in minimising tax liabilities, but also protecting the family's wealth for the benefit of future generations.

DAWNING OF A NEW AGE

Although the legislation on retirement age has not been finalised, it is anticipated that it will be published in early 2011. The Government's proposals indicate that, after 1 October 2011, employers will no longer be able to retire employees using the statutory retirement procedures and any compulsory retirement will have to be justified to avoid claims of discrimination.

This is likely to be quite a change for employers who retire their employees at a certain age and, although the proposals state that employers will still be able to operate a compulsory retirement age, in practice this might be quite difficult to achieve.

The Government is exploring the possibility of further guidance or a more formal code of practice on handling retirement and, hopefully, we'll see this in the New Year. However, employers need to start considering now what their retirement policies should look like before this important change takes place.

CREASEYS KEEPS ITS EYE ON THE BALL

Creaseys recently played a key role in the 11th-hour deal to save ailing Championship football club Crystal Palace. A team from Creaseys assisted entrepreneur, Martin Long, in arranging and structuring his investment in CPFC Limited, the new vehicle formed to acquire the South London football club from administrators.

"This important deal ensured that Crystal Palace could fulfil its fixtures and continue trading," explains Tax Partner, Richard Holme, who led the Creaseys team, along with fellow Tax Partner Elizabeth Robertson.

Martin Long, founder of Churchill Insurance, is a life-long Palace fan and becomes joint Chairman of the new football club, along with Steve Parish, owner of the marketing agency Tag Worldwide.

"We were delighted to be involved in this transaction and enjoyed working closely with Martin to best structure matters for his benefit," Richard comments. "We are pleased that this has given Crystal Palace the opportunity to continue in business and, hopefully, thrive under the new owners."



Richard Holme and Elizabeth Robertson

He continues: "Tax planning for transactions, such as this, forms an important part of the work we do at Creaseys. In the current relatively harsh tax and economic climate, it is important to plan arrangements carefully in advance."

Says Martin Long about the advice he was given by Creaseys: "I was glad to receive good advice from Richard and his team at Creaseys and would feel confident in recommending their services to others who are contemplating transactions or new investments."

WORKING AWAY FROM THE OFFICE

Many employees are occasionally required to work away from their normal place of work and it is, of course, fair and necessary for them to be reimbursed for the additional costs which they incur.

Any payment to an employee for subsistence needs to be reported on the expense and benefits form P11D, unless the employer has already applied for and received a 'dispensation' from HM Revenue & Customs (HMRC). There are a few options available to employers, depending upon which policy of reimbursing the costs suits them and their employees.

For UK day subsistence, the options available are:

1. Reimburse the actual cost the employee has met, based on a receipt. The cost needs to be 'reasonable'.
2. Ask HMRC to agree a 'scale rate', which will be based on a sample of employee claims. If this option is chosen, the employee will not be required to provide receipts for the expense and the employer can make a payment to the employee, even if the actual cost is less.
3. HMRC has published 'benchmark' rates and these can also be paid to employees, without the need for receipts. These rates are:

Breakfast rate – up to £5.00 for irregular early starters, who need to leave home before 6.00am.

One meal rate – up to £5.00 for an employee who has been away from normal place of work for at least five hours.

Two meal rate – up to £10.00 for an employee who has been away from their normal place of work for at least 10 hours.

Late evening rate – up to £15.00 for irregular late finishers, who leave work after 8.00pm.

For UK overnight subsistence, the options available are:

1. Same as 1 above.
2. Same as 2 above.

For overseas overnight subsistence, the options are:

1. Same as 1.
2. Same as 2.
3. Use the rates published by the Foreign & Commonwealth Office but unfortunately HMRC will be withdrawing this option with effect from 5 April 2011. HMRC has, however, said that it will be publishing further guidance in due course regarding what it intends to replace this option with.

If an employer pays in excess of the amounts agreed in the dispensation, the excess will be liable to tax and National Insurance.

There are obviously restrictions regarding these general rules, so please ask us for further details if you require more specific advice or wish us to apply for a dispensation on your business' behalf.

TIME TO GET TAGGED

For Corporation Tax returns sent to HM Revenue & Customs (HMRC) after 31 March 2011, there is a fundamental change in how the return and the accounts have to be submitted. After that date, both the return and accounts will have to be submitted not only electronically, but also with electronic tags attached to the data, so that HMRC can automatically process the information.

Paper returns and accounts will not be accepted and even accounts prepared in Word or Excel will have to be tagged.

Creaseys' accounts production and Corporation Tax software is already capable of producing the documents suitably tagged.

If you produce your own accounts or Corporation Tax returns, please get in contact with us to discuss your options.

TOP MARKS FOR CHARLIE

Charlie Goss MAAT, a trainee accountant with Creaseys, recorded 100% in her latest accountancy exam – winning her the coveted Carter Prize, one of the most prestigious awards made to students by the Institute of Chartered Accountants in England and Wales (ICAEW).



Charlie Goss

Charlie has worked in a number of departments within Creaseys and is currently in the Private Client practice – helping clients including farms and landed estates – and says that she enjoys working with family-run businesses.

"I must attribute my 100% result to all the fantastic work experience and support I've had from Creaseys," says Charlie. "This exam was particularly related to the work I do here – so I guess that was what made the difference."

NEW SET OF STANDARDS

For companies and LLPs subject to audit with accounting periods ending on or after 15 December 2010, a new set of International Standards on Auditing (ISAs) will apply.

The 'Clarity ISAs' are a revised and updated version of the existing Standards. In addition to changes in engagement letters, reports to those charged with governance, discussions with directors and management, and representation letters, there may be changes to the nature and extent of audit work, with a potential commensurate increase in cost.



IN BUSINESS

IN BUSINESS

KEEPING AN EYE ON THE FUTURE

Company directors need to keep abreast of whether there are any potential threats to their business over the next 12 months. Rob Blundell, a Partner of Creaseys, explains what steps they need to take

Directors are responsible for preparing their company's financial statements, so that they give a true and fair representation of the business' past performance, current balance sheet position and future prospects.

The final section of the financial statement covers the concept of 'Going Concern'. The directors are asked to address the question of whether the company can continue in business for the foreseeable future, a period usually viewed as at least 12 months from the date that the balance sheet is signed.

The directors have to assess the outlook for the next 12 months, looking at a number of areas:

1. What are the trading forecasts showing in terms of profitability and, more importantly, cash flow? It is important for any company to have good budgets and reporting information that the directors can use for this. The directors should also consider any sensitivities that might apply to their forecasting.
2. Are there any issues arising from any of the funding that the company may have, such as bank loans? Is there any refinancing due or a review of the overdraft or loan facility coming up? Is the company close to breaching any covenants that are in place?
3. How are the company's main customers doing? Are there signs of problems that could have an impact on the business' orders or even its ability to collect its trade debtors?
4. How are the company's main suppliers doing? Will the company be able to obtain enough supplies to trade as planned? Will there be pressure on prices or payment terms?
5. Are there any points over the coming months where cash headroom becomes tight? If so, how is the company planning to manage these?
6. In more favourable trading conditions, these questions are much easier to answer, however with bank lending tight and trading generally still slow, it is expected that the directors must take more time to consider this.

The company's future outlook

Following the directors' review, they then have to consider whether they need to disclose any of these issues in the accounts, so that the reader of the accounts can fully understand the company's future outlook. This may entail stating that the directors have carefully considered the company's position and are satisfied that it is a going concern.

If there are particular challenges ahead or the company has made losses in the previous year, it is important to disclose why the directors consider the company still to be a going concern, and perhaps outline the steps that they have taken to enable the company to continue to trade.

If this exercise reveals that the company is not likely to be able to continue to trade beyond 12 months, this again should be disclosed and the accounts prepared on a break-up basis.



Peter Booth of MC Group Ltd
with Emma Roberts of Creaseys

IN BUSINESS

IS YOUR BUSINESS READY FOR AUTO ENROLMENT?

New pension laws are due to come into force in 2012 that will have major repercussions for all employers in the UK. We look at the new duties for employers and what preparations are required to ensure your business is ready for the challenge ahead?

From October 2012, all employers will be required to:

- Automatically enrol eligible employees into a qualifying pension scheme, and
- Pay contributions for every eligible employee.

Under current proposals, the requirements will be phased in over four years. The largest companies (those with 800 to 120,000 employees) will be designated a deadline falling between 1 October 2012 and 1 October 2013, with smaller companies following thereafter.

Eligible employees

As a UK employer, you will be required by law to enrol all employees into a workplace pension scheme unless:

- They are already in a qualifying workplace pension scheme, or
- They are under the age of 22 or above State Pension Age, or
- They earn less than the qualifying threshold of £5,035 per annum (in 2006/07 terms).

Costs

The required level of contribution will be phased in as follows:

Date	Total minimum contribution	Minimum employer contribution
Oct 2012 - Sept 2016	2%	1%
Oct 2016 - Sept 2017	5%	2%
Oct 2017 onwards	8%	3%

You will note that the total minimum contribution ultimately rises to 8%, a minimum of 3% being required from the employer (the difference being made up of the employee contribution and tax relief).

Under the current framework, contributions will be based on earnings between £5,035 and £33,540 per annum at 2006/07 levels. These amounts will be increased in line with earnings to provide the final 2012 figures and then beyond that to maintain the real level of contributions.

Timetable

Auto enrolment came into law under the Pensions Act 2008. The new Coalition Government has subsequently confirmed its firm commitment to auto enrolment but is currently undertaking a review of some of the finer detail, the results of which should be published shortly.

Most of the anticipated changes are relatively minor, however one of the proposals involves amending the qualifying earnings band such that contributions are based on the first pound of earnings (i.e. a reduction in the qualifying threshold from £5,035 p.a. to £1) and capped at an upper limit to be confirmed.

There is also pressure on the government to compress the four year phasing period, which would mean smaller businesses would have to meet the new requirements close to the 2012 deadline currently applicable for larger companies.

Action points

To prepare your business for auto enrolment, you need to take the following action:

- Assess whether your existing pension arrangements comply with the new laws and make any changes that may be necessary.
- Identify and provide for employer contributions required from 2012.
- Bring your payroll processes into line with the new requirements.
- Communicate the new arrangements to your employees.

Creaseys has partnered with AWD Chase de Vere, one of the UK's leading Independent Financial Advisers, to help you prepare for this challenge. We can help you understand the new rules and the effect they will have on your business, assess whether your existing pension arrangements comply with the new requirements and advise you on any changes that may be necessary.

We can also advise you on remuneration strategies that may save you money and offset the impact of the new rules on your business.

IN BUSINESS

SELECTING THE BEST STRUCTURE

Elizabeth Robertson, a Partner with Creaseys, talks about the pros and cons of different business structures

When starting out, whether in business or as a property owner, one of the first decisions the owners need to make concerns structure. This will either be a traditional partnership, a Limited Liability Partnership (LLP) or a limited company. The latter two offer, as the names suggest, some form of liability protection compared with a traditional partnership but as a consequence, they must file statutory financial statements at Companies House each year, with resulting costs and some loss of privacy.

As well as commercial reasons for choosing a particular structure, one of the main considerations should also be tax. For tax purposes, the traditional partnership and LLP are identical – they are treated as though they don't exist. This means that any taxable profits or losses generated by the partnership or LLP are simply divided up and then the individual partners are taxed on their share of them, whether or not these are distributed.

For a member of a successful trading partnership, this means that the maximum rate of tax payable on profits will be 51% for those with taxable income over £150,000 or 41% if below.

Companies are treated quite differently as they are themselves taxable; a singleton company paying corporation tax on profits at rates between 21% for taxable profits up to £300,000 and 28% which is the full rate for profits over £1.5 million. These rates will though fall from April 2011 to 20% and 27% respectively, with further 1% per annum decreases in the main rate until it reaches 24% in 2014.

For owners who want to retain profits to grow their business by, for example, incurring capital expenditure or recruiting new staff, a company is increasingly attractive as there is more after tax cash with which to fund the expansion. Partners who wish to similarly invest may find that more than 50% of their profits have already gone to the taxman.

A more attractive solution?

This means that not only trading but also certain investment businesses may find that a company offers a more attractive solution. For example, the owner of a residential property business who wants to use surplus rents to buy further property will benefit from using a company.

Traders undertaking certain activities, such as qualifying research and development, also acquisitive businesses which purchase goodwill, will prefer a company structure in order to benefit from tax reliefs that are not available at all to partnerships/LLPs.



Gillian Hyde and Sarah Rasmussen of Psychological Consultancy

If, though, the owners want to extract as much profit as possible as it arises, a partnership or LLP would usually be better, as the tax cost of taking profit out of a company, normally by salary or dividend, is greater than with a partnership when taken together with the company tax/National Insurance. For this reason, consultancy-type businesses will typically be structured in this way.

Property investors who hope to be able to sell properties at a gain from time to time, and extract the cash proceeds for personal use, will also prefer a partnership structure to be able to take advantage of the comparatively lower rates of capital gains tax.

Many owners would ideally like the best of both worlds – to be able to retain profit tax efficiently when there is a need and to be able to take profits out without paying more tax than necessary when these are not needed by the business. Fortunately, this can often be achieved through the use of structures which combine both companies and partnerships, allowing maximum flexibility and choice.

IN BUSINESS

SHEDDING LIGHT ON DISCLOSURES

Recent amendments to Financial Reporting Standard 8 (FRS8) and the adoption of Companies Act 2006 (CA2006) have led to some changes in one of the most contentious disclosure areas - Related Parties. James Pearce, a Partner with Creaseys, outlines these changes

Section 413 (S413) of CA2006 sets out the new requirements for the disclosure of transactions with directors. While these are still very much a matter of interpretation, the current consensus is that S413 requires separate disclosure of each individual advance made to a director (payments where a director's loan account is 'overdrawn').

The common sense approach is to do that for individual advances over a certain level (say £5,000 – no formal guidance is given) but to group together small advances into a single disclosure.

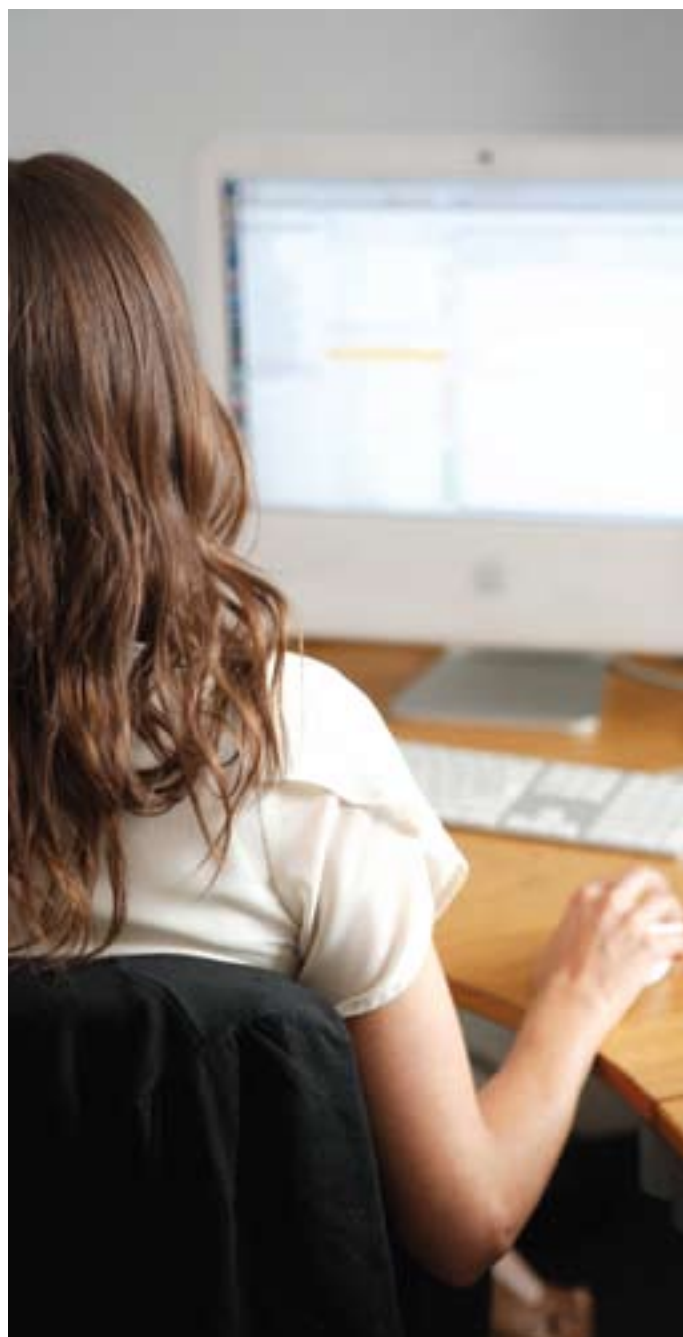
Any such disclosure of advances should be done with consideration of the requirement for prior shareholder approval of directors' loans greater than £10,000 in aggregate.

For a company where the director allows their current account to go overdrawn during the year, the process of gathering the disclosure information will be as follows:

1. Create a chronological list of all transactions with directors.
2. Identify opening and closing balances and then follow the activity to establish where the account has gone overdrawn and an advance has been made.
3. List all advances during the overdrawn period over an agreed material level (say £5,000), remembering the £10,000 in aggregate rule.
4. Identify any other material advances and consider whether they need to be reported separately.
5. Aggregate the remaining non-material advances.
6. Identify repayments by the director, listing each one individually.
7. Obtain any other relevant information, such as interest rates, security etc.

It is clear that this is more onerous and that more information will be in the public domain, than under the previous regime. Directors therefore need to think about the activity on their current account and the impact of any resultant disclosures.

In FRS8, a number of the definitions have been clarified, but the single biggest change is the removal of the '90% Rule', whereby any subsidiary owned 90% or more was exempt from disclosure of transactions within the group. That exemption now only applies to wholly-owned subsidiaries and if further changes are made to bring UK standards in line with International Accounting Standards, then that exemption will disappear entirely.



IN BUSINESS

MAKING 20% LESS PAINFUL

Creaseys' VAT Director Sharon Crush outlines what plans should be made before the VAT rate rises to 20% in 2011

As the change of VAT rate date gets ever closer, there is still time for some careful planning with regard to applying the 17.5% rate as widely as possible. It can also be used as an incentive to encourage customers to pay for supplies early, giving a business a healthier bank balance. If your business supplies the general public or customers who are not in a position to recover all the VAT they incur, you may want to consider how to tackle VAT on your sales over the next few months and into 2011.

The anti-forestalling rules already apply but only kick in if the customer cannot recover all the VAT you are to charge and either there is a connected party situation, the transaction amount exceeds £100,000 or the payment terms allow payment beyond six months from the date of invoice. Care needs to be taken with regard to the tax point rules, so that the VAT rate of 17.5% can be applied even on supplies which will only be delivered in 2011.

Currently we are working with a number of clients on pre-payment schemes which do not fall foul of the provisions, delay application of the new higher standard rate of 20% as long as possible and also encourage early payment.

The tax point rules are often misunderstood and confusion arises over when a basic tax point is overridden by an actual tax point. Basic tax points arise for goods when they are sent to a customer; or the customer collects them, or they are made available to the customer. For services it is the date the work is completed. Actual tax points override these dates if an invoice is issued or payment is received before the basic tax point arises or an invoice is issued within 14 days after the basic tax point.

While that may seem confusing, VAT planning around the application of these rules can allow a business to improve cash flow and delay the payment of tax. For services there is also the continuous supply of services rules, which can give an added benefit.

Every business should be looking at the VAT rules and apply what is available to benefit the business' cash flow position. Even small things like changing the VAT accounting periods to make early recovery of VAT or delay payment to the furthest date can provide large benefits.



Sharon Crush

Businesses should also be looking critically at the VAT being incurred and timing of recovery. Maximising input tax claims and minimising irrecoverable VAT is good housekeeping. This applies not only to UK VAT but to VAT being incurred across the EU Member States.

The changes in the rules for the place of supply of services, which came in on 1 January 2010, should have meant businesses experiencing less charging of non-UK VAT and more accounting of VAT in the UK on cross-border supplies received through the reverse charge procedure. Unfortunately this has not always been the case in practice and work has had to be done to educate suppliers to the correct accounting procedures.

We would recommend each and every business reviews its VAT position to ensure cash leakage through poor application of the available accounting rules is eradicated and the best cash flow planning position for VAT be adopted. You should also consider what the change in rate on the 4 January 2011 means for your business and what planning you might wish to adopt to assist customers and encourage early payment for supplies being made in 2011.



PERSONAL PLANNING

PERSONAL PLANNING

NOT AS BAD AS ANTICIPATED

With effect from 23 June 2010, the rate of Capital Gains Tax (CGT) for higher rate taxpayers was raised from 18% to 28% and this new higher rate applies to trustees and personal representatives, regardless of their levels of income and gains. Client Manager Paula Basleigh shares some ideas about minimising your risk

Many professionals had originally anticipated rates of some 40% or 50% so, while the 10% increase in rate is burdensome, the Budget announcement came as good news for many. Despite rumours that the rate could increase in the next Budget, the Chancellor has confirmed that the 28% rate will apparently remain in place for the length of the Parliament, so investors should know where they stand until at least May 2015.

While the increase was not unexpected, due to the uncertainty around the change, many clients chose to 'wait and see what happens', in the hope that the increase would take effect from 6 April 2011 and have now missed out on some planning opportunities.

Complications

This mid-year change is likely to cause complications when preparing 2010/11 Tax Returns and taxpayers must seek advice to ensure that allowances and losses are allocated in the most beneficial way.

Many taxpayers can still reduce their future CGT bills by taking some simple steps, these include:

- **Utilising family members' lower rate bands and annual exemption**
Transferring assets into joint ownership with a spouse triggers no tax charge in itself and can reduce CGT by up to c.£6,500 on a later sale if the spouse has no other income or gains.
- **Using trusts**
Chargeable gains could arise when gifts of non-business assets are made to family members because such disposals are treated as made at market value. Using a trust should allow relief to be claimed, which will defer the CGT liability until the asset is eventually sold.
- **Planning well in advance where Entrepreneurs' Relief might be available**
Entrepreneurs' Relief has now been increased to £5 million, so this important relief, which applies a 10% tax rate on disposals of certain 'business assets' has become even more valuable. Many taxpayers do not realise that the stringent conditions for the relief to apply must be adhered to for at least one year prior to a sale.



The conditions include a minimum 5% holding for shares in unquoted trading companies and the necessity for the taxpayer to be an employee. The conditions need to be reviewed well in advance of a disposal to give time for any essential changes. It might be necessary to take steps, such as aggregating family shareholdings to ensure this percentage limit is met, appointing shareholders as employees and spreading shares around the family.

- **Structuring business sales**
Some business sales include 'earn-out' agreements, whereby loan notes are received as part of the consideration. Such deals need to be structured carefully to ensure that Entrepreneurs' Relief remains available on the subsequent redemption of the loan notes, as this can be easily lost resulting in an additional 18% of CGT becoming due. In certain cases income tax may apply on an earn-out.
- **Consider the use of a company**
Incorporating a family business could result in lower tax liabilities not only on retained profits but also on an eventual sale of property or other assets in certain circumstances.

Whilst the rate of CGT has increased, we are still confident that there are many ways for taxpayers to minimise their tax exposure and we are very happy to provide advice whenever a disposal of an asset is being contemplated even if this is likely to be many years ahead.

PERSONAL PLANNING

LEAVING ON A JET PLANE

There is evidence that HM Revenue & Customs (HMRC) has become more interested recently in taxpayers trying to leave the UK - rather than those who come to live here says Ola Majcherczyk, a Tax Client Manager with Creaseys. This is highlighted by the fact that a form which needed to be completed on arrival in the UK has been scrapped, while a similar form advising HMRC that one is becoming non-resident is still in place.

Over recent years, HMRC has successfully won court cases proving taxpayers should be assessed as UK residents, even following their apparent departure from the country.

Those wishing to become non-residents should always seek professional advice, particularly as new guidance by HMRC has been issued, arguably going beyond even what has been decided in the courts.

TAKE SOME SIMPLE STEPS

With the Nil Rate Band (NRB) frozen at £325,000 for the next three years at least and with the prospect of asset values recovering over this period, Mark Howard, a Partner at Creaseys, says it is clear that the impact of Inheritance Tax (IHT) is likely to result in a larger tax burden, unless action is taken to mitigate these effects

For example:

- Unlimited gifts can be made to a UK domiciled donee spouse or civil partner.
- £325,000 of chargeable assets, that is after all available reliefs, principally Business Property Relief (BPR) and Agricultural Property Relief (APR), can be given away to trust free of IHT and CGT every seven years. Larger amounts may be given to individuals.
- BPR and APR may give a total exemption from IHT but there are stringent conditions to satisfy this. For example, shareholders in unquoted trading companies will need to watch that investment activities (for example, holding of large cash balances) do not prejudice the exemption. Premises held outside the business will, at best, qualify for a 50% BPR exemption and some trades (such as property dealing) will not qualify at all.
- Gifts to charities, political parties and for national purposes are still exempt.

Make a clean break

It would be prudent to prove to the UK tax authorities that any UK properties left behind are either being disposed of or rented out. It may also be sensible to cancel club memberships, subscriptions, doctor and electoral registrations and limit links with the UK to an absolute minimum. This is all in order to prove that one has made a 'clean break' with the UK.

HMRC may then be satisfied that non-residency has been successfully established. Simple day-count and limiting visits to below 90 days per year will no longer suffice. A statutory residency test is being devised but it will be some time before this is legislated so, for the time being, one must try to rely on the vast guidance in this area and contradictory case law and hope not to be caught out by its intricacies.

This is a key growth area for Creaseys and we act for several hundred non-residents and non-domiciliaries.

Normal expenditure out of income is exempt if the donor's standard of living is unaffected and a pattern of giving can be established. This relief is limited only by the ability to demonstrate 'net disposable income' and a regular pattern of giving.

This can be a very effective and valuable relief but it is very important to retain adequate documentation and records.

Beyond the basics

There are many other ways of planning to minimise the impact of IHT. Some of these involve the identification of 'surplus assets' or assets that may increase significantly in value over time and considering whether it is feasible to transfer these assets out of an estate now. Others involve the use of 'gift and loan' trusts, whereby an investment is funded part by gift and part by loan.

The gift element is removed immediately from the donor's estate, whilst the loan can be repaid to the lender over a number of years. Any increase in value of the underlying investment is kept outside the donor's estate and thus IHT is avoided on any such increase. The discounted gift can be very tax effective for elderly clients wanting to maintain their income, while looking to reduce their IHT liability.



PERSONAL PLANNING

PUT YOUR TRUST IN TRUSTS

Trusts are one of the most flexible and versatile vehicles for holding and managing assets and are therefore widely used in many different situations. Stephanie Parker, Creaseys' new Trust Manager, says that they should be used more often to protect family wealth and often save tax

Trusts are a very simple concept. A trust is an arrangement where the ownership of someone's asset is transferred to someone else to look after and use to benefit a third person (or group of people). The manner and extent to which they can benefit will be set out in the trust deed. Some of the reasons for using a trust are explored here.

Trusts are a key feature in Inheritance Tax planning. This is because someone may be looking to transfer assets outside of their estate as early as possible to avoid Inheritance Tax, but does not yet wish to pass control to those who they wish to benefit or indeed may be undecided on who should eventually benefit.

It is usually beneficial for death benefits from insurance policies and pension funds to be held in a trust, so that the proceeds are not included in the taxable estate of the deceased. This would save 40% Inheritance Tax and may mean that the benefits may be paid out quicker for the family's benefit, rather than waiting for probate to be obtained.

Offshore trusts can be a useful tool as part of tax planning arrangements for individuals with international connections.

Passing assets via a trust rather than direct can also save large amounts of Capital Gains Tax in certain situations.

Wealth preservation

As assets pass to successive generations, there can be a dilution of ownership as assets are divided amongst beneficiaries. By holding the assets within a trust, this is avoided as control of the whole asset remains with the trustees, but it still allows the benefit from the assets to be enjoyed by the next generation in whatever shares are appropriate.

Asset protection

Giving away all control over what will happen to an asset can be daunting. A trust can provide an effective way of limiting the risks. For example, a trust in a will could leave an asset for the benefit of the surviving spouse, but the deed would stipulate what will happen to that asset on the death of the spouse.

A trust can also to an extent protect assets from the personal risks affecting the beneficiary, such as bankruptcy and divorce, and keeps family assets under the control of someone you trust.

There are many other reasons an individual may want to set up a trust, but whatever the situation it is essential that the terms of the trust are carefully considered.



PERSONAL PLANNING

IT'S A FAMILY AFFAIR

The new harsh tax regime is now in place and, as Creaseys' Partner Richard Holme explains, many clients are thinking about tax mitigation

We are now several months into the new harsh tax regime where many taxpayers find themselves paying 50% or even a 60% marginal rate on their income. Since April 2010, income over £150,000 has suffered a marginal tax rate of 50% and there is also an awkward 60% rate between £100,000 and £112,750 due to the way in which the personal allowance is withdrawn.

In addition we have increases in National Insurance applying from April 2012 for those with employment income and the main rates of employer and employee contributions rise from 12.8% and 11% respectively to 13.8% and 12%. In addition the surcharge for those with high employed or self employed income rises from 1% to 2%. Some may therefore face an overall marginal 'tax' rate of 52% to 62% from then.

Naturally these changes have focused many clients' minds on tax mitigation and we have seen considerable interest in tax effective investments and in transferring savings or investments round the family to save income tax on dividends and interest.

Much interest has been shown in offshore insurance bonds where there may be the facility for funds to be managed carefully and also to roll up largely free of taxation. Tax free withdrawals of up to 5% of the capital sum can be made each year and there may be opportunities also for inheritance tax mitigation through the appropriate writing of death benefits etc. in trust.

An EIS strategy

Twenty per cent income tax relief may be available on up to £500,000 invested through the Enterprise Investment Scheme (EIS) and there is also the facility for capital gains tax roll over, thus making such an EIS strategy especially tax effective given the increase in the main rate of CGT to 28%. In principle for every £1 invested there may be a tax rebate of up to 48p and also the prospect of tax free gains.

Generally we have seen clients looking to use companies a little more for consultancy and even investment activities so as to reduce the rate of tax suffered on earnings or investment income from 50% or 60% to the small companies rate which is currently just 21%.

Some clients have expressed an interest in more aggressive tax planning and we are well placed to provide information on these in appropriate circumstances.

We normally find a review of a family's tax affairs can lead to quite significant income tax savings, so please contact us should you wish some further advice in this area.





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