

2009

SPRING NEWS



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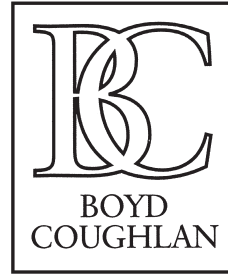
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Oh for a little hindsight

The economic news is so bad that it's easy to forget to be shocked. Banks going cap in hand to the Government and being partly nationalised – fraudulent investment advisers losing 50 billion dollars – sterling on the slide – tax cuts to be followed by tax increases. Where will it all end?

It's easy to be wise now, of course: the banks should have remembered that in business, it's a good idea to do what you understand and understand what you do. Their policies on lending and investment in recent years would have horrified traditional prudent financiers, and they have created a monetary whirlwind that is shaking everyone. No-one in banking or in Government appears to have had any inkling of how bad things were, and they are still arguing about how bad things are going to get while avoiding any suggestion that they were to blame.

In difficult times, it's more important than ever to follow good financial practice. Don't close your eyes and hope that things will improve – even if that may sometimes seem to be Government policy – but make sure you understand how your business or your personal finances are affected. There are steps you can take if you plan ahead. If you don't, it's like crossing a motorway with your eyes shut. Or like running a bank, perhaps...

If you need sound advice on surviving a recession, we are here to help. ●

Can't pay, won't pay?

One of the important announcements in Mr Darling's Pre-Budget Report was the creation of a new Business Payment Support Service. HMRC have in the past been criticised for being too ready to close a business down if it could not pay its tax: now, it is official policy to be flexible and to try hard to keep the business going.

There are conditions: the taxpayer must be in genuine financial difficulty, and it must be likely to be able to pay if given more time. It will be worth having detailed financial information to make a case to HMRC. If the business has no prospect of ever paying the liability, they are likely to take the usual enforcement

action and cut their losses.

There are some major concessions in the new policy: if you agree a "time to pay" arrangement before VAT falls due, there will be no default surcharges to pay. A construction industry business can defer tax without losing entitlement to be paid gross. Banks don't seem to want to lend money to anyone – it may be cheaper and easier to get credit from HMRC than it would be to borrow in order to pay them.

The important thing is to be prepared. If you want to discuss your tax liabilities – how you can reduce them, and how and when you can pay them – we will be happy to advise you. ●



More paper

HMRC have issued a warning – almost an apology – about a new VAT reporting rule that is expected to come in on 1 January 2010. For years anyone selling goods to business customers in other member states has had to file a Sales List – a report of all despatches, complete with the foreign VAT registration numbers of the customers. Now this is being extended to supplies of services to business customers abroad. It's all part of the EU's crackdown on carousel fraud, which is still losing us all a great deal of money into the pockets of criminals.

If you supply services to foreign customers, and treat those services as non-VATable, you will need to watch out for this new requirement. We will be happy to advise you. ●

Shopping around

A recent survey suggested that 65% of small businesses were dissatisfied with their bank and thought about changing, but only 4% actually did so. Well, HMRC are doing just that – it's unlikely that they are unhappy with the service or security of the Bank of England, but a decision was taken a few years ago that the Bank would no longer provide clearing services to government departments. HMRC have put their business out to tender and will in future use Royal Bank of Scotland and Citi. When this was decided it was probably not expected that the Government would own a large part of RBS...

HMRC say that they will make sure their "customers" know where to send money. If you have set up an electronic transfer, you will need to change the sort code and account number – but only when they tell you.

They are also bringing in a facility to pay tax by credit card, but there will be a charge of 1.25% of the amount paid. Perhaps they will give Nectar points... ●

Less paper

HMRC have confirmed that, from April 2010, traders with turnover of more than £100,000 a year and all newly-registered traders will have to file their VAT returns online and pay by electronic transfer. Smaller traders who registered before that date will still be able to file paper returns, but this will be reviewed by 2012. A VAT return is quite a simple document to file online, and most businesses have a computer these days – but it will still be necessary to obtain authorisation for filing in good time. ●

PAYE or not PAYE...

Gross Pay	Pension	AVC's	Taxable Pay	This Pa
			388.27	0.00
			0.00	0.00
			388.27	0.00
			0.00	0.00
			0.00	0.00
			0.00	0.00

...that is the question, as Shakespeare might have put it. HMRC are well-known to prefer to regard people as employees – they get their money more securely from the employer under PAYE than from all the individual workers under self-assessment, and the National Insurance Contributions for employees are much higher than for self-employed people.

If a business treats people as self-

employed – paying them gross – and then loses an argument with HMRC about the workers' status, it's the business that has to pay. HMRC are particularly suspicious of construction as an industry where people may not pay the right amount of tax, and they regularly argue that sub-contractors are really employees. It's important to realise that status depends on the facts, not on what the parties agree or on what the workers are called.

In a recent case, HMRC decided that 321 workers were really employees, in spite of an earlier ruling – which they had mislaid – that they were self-employed. The Special Commissioner looked at all the facts and decided that 314 of them – bricklayers, scaffolders and team-leaders – were self-employed. Only a small number who operated the company's expensive plant – truck and fork-lift drivers – were employees.

If you are thinking of paying someone gross, be aware of the risks. It's clear from this case that a good argument can win, but it's also possible to lose. We can help you get your workers' status right. ●

Flat rate scheme

When the VAT rate changed to 15% on 1 December 2008, most of the rates used by traders registered for the small business flat rate scheme also fell – but not by 2.5%. Some of the rates didn't change at all. HMRC explain that the flat rates take account of the amount of input tax that a trader is likely to incur, but a flat rate trader can't recover: when the standard rate goes down, that irrecoverable VAT will fall too. What this means is that the advantage of the flat rate – the difference between the output tax you collect from your customers and the amount you have to pay to HMRC – is likely to go down for the next year.

It's unlikely that a flat rate trader will want to leave the scheme just because of this rate change, but it's a reminder that it is worth keeping the scheme under review. If you aren't in it but your turnover is up to £150,000 a year, it's worth considering as it simplifies your VAT and may save you money. If you are in it, you have to monitor your turnover each year in case you have to leave the scheme, and you should also make sure that you are not losing money if you are forgoing a lot of input tax.

Then, of course, there are the complications of making sure that you account for the right amount of VAT when someone pays you in December for a flat rate supply you made in November... if you want any help with this, we will be happy to advise you. ●

A change of heart

If you are building houses to sell them, you can recover all your VAT as you go along. If you do the same thing with the intention of renting the property out, you can't reclaim VAT. What if you change your mind from one to the other? HMRC have recently published guidance on this scenario, explaining that they suspect it might become more common in the economic climate – houses that were started when times were better may not be saleable once they are completed.

As long as you still intend to sell the house in due course, you don't lose all the VAT. However, there may be some clawback of the VAT you claimed in the past, because you are now making a supply that is partly exempt – renting for now, selling in the future. HMRC's guidance explains how the clawback is calculated. If this could affect you, we'll be happy to advise you on whether you have anything to worry about – it may be possible to avoid any clawback if you take action before the renting starts. ●



There are limits

The Pre-Budget Report included the welcome announcement that the Government has decided to put its attack on husband-and-wife businesses on the back burner. After HMRC lost a dispute involving Arctic Systems Ltd, they promised that they would bring in changes to the law enabling them to tax the main earner on income that a jointly-owned business paid to someone who was “not really earning the money”. Apart from stopping some useful tax planning, these rules promised to be a nightmare to operate. We may not see them again for some years.

Several recent cases are a reminder that the existing rules are enough to stop a complete free-for-all. A man claimed that his grandchildren were partners in his

business – there was no evidence to support this, which is not surprising as they were between 7 and 10 years old. Costs of the appeal were awarded against him. In another case, parents arranged for dividends to be paid to their young children, and the settlements rules – which failed to bite on Arctic Systems – meant that they remained taxable on the income. In a third, a man waived his entitlement to a company dividend so that a bigger amount could be paid to his wife. Again, that was caught by the rules as they stand.

Husband and wife tax planning can provide routine and legitimate savings, but you need to know what works and what doesn't. We can draw the borderline for you. ●

Do your duty

The Companies Act 2006 has imposed new duties on directors from 1 October 2008. It may be surprising to find out that there was no explicit law before that which required directors always to act in the best interests of their company, but the Act has put into statute what was previously a duty under the common law. Directors are now under a duty to avoid situations in which their own interests conflict with their company's – they should not compete with the company or use information obtained in their work to their own advantage at the company's expense.

It's inevitable that conflicts will arise from time to time. When that happens, the director should tell the board and abstain from any vote which decides whether the situation is acceptable.

As an alternative, the shareholders can approve a conflict by passing a simple majority resolution in a meeting.

Also, be aware that directors are not allowed to accept a benefit from a third party – a supplier or a customer, say – which might constitute a conflict of interest. This rule aims to outlaw anything that might be seen as a bribe. It is not intended to outlaw all corporate hospitality, but if in doubt, a director should either refuse an offer or should put it to the shareholders.

If a director does not do this, the company – or an administrator who takes over the company in insolvency – may have claims against the director to make good any lost profits. If you think you have a conflict of interest, it's important to be open about it, and get it approved. ●

Free lunch



Danish taxmen are even harsher than the UK version. Not only did they not allow businesses the cost of providing lunch to business contacts and employees – they even wanted to charge VAT on “putting business goods to private use”. The European Court restored sanity: in a business meeting, it's more sensible to give people something to eat and drink than it would be to make them all go out to find their own food. So refreshments in a business meeting – whether it's for employees or outsiders – aren't charged to VAT as a “deemed supply”.

On the other hand, the UK rules disallow any input VAT on the cost of providing “hospitality of any kind” for people who aren't employees – whether it's a meeting or a jolly, you can't claim the VAT on entertaining customers or suppliers. If you aren't sure what you can claim, we'll be happy to advise you. ●

VAT a mess

It's not yet clear whether the temporary cut in the standard rate of VAT will rescue us from recession, but it has certainly kept a lot of people busy since it was announced in the Pre-Budget Report in November. After three changes of rate in 35 years, we have two in 13 months. As usual, the rules aren't simple and there's plenty of scope for error. HMRC say they will apply “a light touch” when dealing with the rate change – at least they recognise that it's human to make mistakes.

For example, if you use the cash accounting scheme you usually take the VAT fraction – was 7/47, is now 3/23 – of the cash received from customers. That's your output tax. It's simpler than having to work out the VAT in your debtors when you send out an invoice. Unfortunately, it doesn't work that way on a rate change: if you charged 17.5% VAT to your customer before 1 December, you have to apply 7/47 even if the cash comes in later. In some circumstances you can issue a credit note and refund the difference to the customer – your choice – but you can't simply collect 117.5% of your bill and send only 3/23 of it to HMRC.

There are plenty of other details on a change of rate that can go wrong, and we know we'll have to do it all again for 1 January 2010. If you want advice on the rules, we are here to help. ●

Dissatisfaction guaranteed

It is common for directors to be required to sign guarantees on behalf of their companies – leases, borrowings, commercial agreements. In difficult times, it will be more common for the guarantees to be called in. Is there any tax relief?

In a recent case, a former director had to pay £13,000 to a debt factoring company when the company failed. He put the expense on his self-assessment return as a deduction from salary. HMRC objected, and the Special Commissioner agreed with them – for several reasons, he could not enjoy income tax relief. Crucially, the expense was not incurred in the course of the employment because he had left office by the time the guarantee was called in. Besides, it was not “necessarily” incurred because not every director has to sign a guarantee. He could have a capital loss, but as he had no gains that would save him nothing.

Unfortunately, guarantees are a fact of life for people in business. This case is a reminder that they won't necessarily produce a tax rebate if they are called in. ●

Shock in Essex

VAT returns have been sent to Southend for longer than most people care to remember. Now they will go to Shipley instead. If you use the reply-paid envelope they provide, or if you file online, you won't notice – but if you can't find the current envelope, don't copy out the old address. The return will probably arrive late, and that means a rap over the knuckles from HMRC – or worse. ●

Car tax

The capital allowance rules for business cars change radically on 1 April 2009 for companies and 6 April for income tax traders. New cars bought from then on will receive 20% allowances if their CO2 emissions rating is up to 160g/km, but only 10% if the rating is higher. A 100% first year allowance will continue to be available where the rating is up to 110g/km.

For many years, cars which cost over £12,000 have been subject to special rules. The maximum writing down allowance has been £3,000 a year, but a full balancing allowance has been given on sale. So a car costing £80,000 and sold for £50,000 after 3 years would enjoy full tax relief for the £30,000 depreciation. Under the new rules, an expensive car with no private use will receive the full 10% or 20% allowance – but there will be no balancing allowance on sale. The unrelieved expenditure will continue to be written down into the future.

The old rules will be retained until 2014 for expensive cars bought before April 2009. That means that there is no rush to sell these cars now in order to trigger the balancing allowance.

Overall, the changes are complicated and will make a significant difference to the tax relief on motoring expenditure. If you would like to understand them better, or if you are wondering whether to buy or sell a car before or after the changes, we will be happy to advise you. ●



You signed it

What happens if you sign a contract and fail to read all the small print – then discover that there is something nasty hiding in there? A couple of recent cases have given hope to those who are bewildered by legal jargon, although both of them ended up in court.

In one, a builder included a standard term of business in a contract which required all disputes to be referred to arbitration. The customer wanted to take legal action against the builder, but the builder said that arbitration was the only way to go forward. The court held that the builder – a professional person – had an unfair advantage over a private individual. Although it was not an intentional “con”, the term should have been given more prominence and more explanation if it was to be included in a standard contract. The builder could not rely on it.

In the other case, a franchisee signed a contract in which he appeared to accept that he had not relied on any representations by the franchisor before agreeing to its terms. In fact, the franchisor had fraudulently misrepresented a number of important matters such as likely turnover and profit and the level of risk. The court held that a contract cannot exclude liability for fraudulent misrepresentation – the clause was unreasonable, and the franchisor could not rely on it.

It's always better to understand what you are signing – but, if a dispute arises, it's even more important to get a lawyer to confirm what your rights are. You may be bound, but you may not. ●

Don't be late

Filing company accounts late has been subject to a penalty for a number of years. Up to three months late costs £100. It's hard to persuade Companies House that a missed deadline should not be penalised.

The penalties are going up substantially for late filing on or after 1 February 2009. The lowest level goes up to £150, but that's for up to a month late. One to three months becomes £375; more than six months goes up from £500 to £1,500. Once the new rules have been in place for a year, a second successive default leads to a double charge. The figures are about five times greater for public companies.

The higher penalties make it even more important to make sure that accounts information is available in good time. ●

Age before beauty?



In the recession employers may find themselves with a double headache: having to make employees redundant, and having to be able to justify the choice of employees to let go. There have been several recent cases in court which have cast light on the age discrimination rules, which have come in since the last downturn. In each case the question was whether the choice of employees, or the terms offered to those leaving, constituted age discrimination.

The judges found that the employers were protected by the rule which allows discrimination if it is “a proportionate means of meeting a legitimate aim”. Choosing employees with shorter service could be proportionate because it retained more experienced workers. Agreeing a points system with the union could be acceptable because carrying out the redundancy exercise in an agreed and peaceful way was a legitimate aim.

If you are in the unhappy position of having to lay workers off, make sure that you have considered your legal responsibilities – the last thing you want is a series of claims coming back afterwards. ●

IHT and falling prices

What's worse than seeing your investments fall in value? Having to pay tax on the value a year ago – because Inheritance Tax is calculated on probate values at the date the person died. So someone who inherits land or quoted shares before a downturn can suffer a double whammy.

There is a get-out – as long as the person who pays the IHT, such as the personal representative, sells land within 4 years of the death or quoted shares within 12 months, the tax can be recalculated using the sale proceeds instead of the probate value. If that time limit is approaching, the executors should think about the values of the assets they still have and decide whether they can claim the relief.

If you are concerned about IHT or involved in administering an estate, we are here to help. ●