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business update

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We've updated our website with new features!

At Anderson Barrowcliff we have given our website a major revamp to include a new layout, new features and up to date information about the firm.

New sections have been added to reflect our progress and development through providing relevant services to you and your business. These include information about our specialist work in not-for-profit sectors such as our services for academies and charities; helping businesses large and small to access corporate finance and our forensic accounting & litigation services in the legal sector.

We hope that you enjoy the new look and feel of the website; something that we think has changed for the better. Please feel free to register to access the full website, including a variety of factsheets and the option to receive the Anderson Barrowcliff LLP monthly eNEWS.

Also make sure you follow Anderson Barrowcliff on our new LinkedIn page to receive news about our up-and-coming events and updates that may affect your business. Visit **www.anderson-barrowcliff.co.uk** to see the changes for yourself.

SUMMER 2012

Restricted reliefs

A key new announcement in Budget 2012 is that the unlimited availability of certain reliefs against income is to be capped with effect from April 2013.

The policy decision is reflected in a recent press release:

'Some individuals on very high incomes have used reliefs to pay little or no tax, sometimes year after year. This Government believes it is not right that taxpayers with very high incomes should, year on year, pay little or no tax as a result of unlimited reliefs.

Other countries already restrict tax reliefs. For example, the US caps the income tax relief available for charitable donations.'

The outline proposal

The proposed cap is the greater of 25% of income or £50,000. This means an individual with an income of £250,000 in 2013/14 may only be able to offset £62,500 against their income. It is only set to apply to reliefs which are currently unlimited. The principal reliefs affected may include loss reliefs that can be claimed against total income, qualifying loan interest relief and reliefs for charitable giving.

Reliefs that are already capped such as pension tax relief, Enterprise and Seed Enterprise Investment Scheme income tax relief, Venture Capital Trusts and the Cultural Gifts Scheme are not affected. This does provide some potential alternatives for the high income individual to consider.

Impact on charities

There is concern about the impact these proposals will have on charities. In response to this the Government has indicated that:

- the cap will not impact on the tax reclaimed by charities under the Gift Aid scheme and
- 'it will explore with the charity sectors ways to ensure that this change does not significantly impact on charities which depend on large donations'.

What next?

Further details are expected to emerge over the summer on how the cap will be implemented and we will keep you informed of developments. Meanwhile, please do contact us if you consider that this will impact upon you, so that any relevant action points can be explored before the expected implementation date of 6 April 2013.

IN THIS ISSUE:
A lender and borrower be | A BPR battle | To share or not to share | New Government initiative helps small businesses | Capital Allowances – changes ahead for cars | A matter of give and take

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A lender and borrower be

There are a variety of circumstances where taxpayers can obtain tax relief on qualifying borrowings. Whilst the ability to obtain tax relief on your home mortgage is unfortunately long gone, tax relief is available in a number of business related situations, such as borrowing to lend to a trader or to invest in certain 'close' companies. A close company for this purpose is generally an owner managed type company where the business of the company is either trading or letting property to third parties.

The conditions are few but getting the structure right is critical as a recent case will demonstrate.

HMRC denied a claim for tax relief on bank interest paid by a taxpayer which had been used by his company to develop a property site because the borrowing had been structured using a personal overdraft.

The taxpayer owned land and formed a company to develop the site and run future trading activities. The development cost amounted to approximately £1 million. The taxpayer took out a personal overdraft facility of £1,045,000 and the bank's overdraft facilities included 'any other account that may be opened as a replacement or substitution for it'. The taxpayer's intention was to provide the necessary funding for the company to develop the site and for the company to then reimburse the interest paid to the bank.

During the year ended 30 June 2005 the accounts of the company disclosed that '…during the year the company paid interest totalling £128,464 to the director…in respect of working capital loans provided to the company'. The company had not withheld tax from the interest payments and HMRC issued assessments to the company for it.

The taxpayer stated that the £128,464 was not income but a reimbursement by the company of overdraft interest paid personally by him. Assessments were raised by HMRC in respect of the interest income omitted from the tax return.

HMRC argued that relief could not be given in respect of interest incurred (which would have cancelled out the reimbursement received) by overdrawing an account. This was because the legislation stated:

'Relief is not to be given for interest on a debt incurred –

(a) by overdrawing an account, or

(b) by debiting the account of any person as the holder of a credit card or under similar arrangements'.

Whilst the Tribunal had sympathy for the taxpayer, the legislation was clear and the appeal was dismissed.

A BPR battle

Securing Business Property Relief (BPR) is one of the key tools for significantly reducing Inheritance Tax exposure as it can provide 100% relief on the value of businesses or shares.

The relief is not available where the activity does not amount to a business and, if it is a business, where it is wholly or mainly for the making or holding of investments. This means that securing BPR on property (land and buildings) can be a minefield particularly where property letting is involved. HMRC have always strongly resisted BPR claims, usually on 'investment' grounds and have generally found strong support from the Courts. There has been debate, however, on the issue of BPR and furnished holiday lettings.

It now seems that a recent case may have caused some serious cracks in the HMRC stance. A few years ago the HMRC instructions seemed to suggest that where the owner was active in the letting process the relief would be due. More recently, that instruction has been removed and replaced with an instruction to 'refer to Technical Team (Litigation)', suggesting that things were going to get rough! Well, now it seems that they have and the first round has gone to the taxpayer.

The battleground was a bungalow in Suffolk with direct access to the beach and accommodation for 11 people to enjoy the local delights. The property, known as 'Fairhaven', provided little shelter for HMRC, who first got on the wrong side of the Tribunal judge because of the heavy-handed way that they had dealt with the pre-hearing process.

HMRC argued that the letting of this property by the late owner was not a business and, if it was, then it was just an investment and so BPR was not available on her death.

The Tribunal judge considered the case law precedent which identifies six features of a business. He pointed out that, contrary to the view of HMRC, it was not necessary to have all six features in place but then proceeded to identify all of them as being present in this case. He considered that this was a business being carried on along proper lines over a reasonable period of time. It was making a good level of income (£16,000 gross in the final year) and was providing the sorts of supplies to customers which were expected in that type of business.

On the issue of investment, the judge was quite clear – HMRC were wrong. He summed up his views as follows: 'We have no doubt that an intelligent businessman would not regard the ownership of a holiday letting property as an investment as such and would regard it as involving far too active an operation for it to come under that heading. The need constantly to find new occupants and to provide services unconnected with and over and above those needed for the bare upkeep of the property, lead us to conclude that no postulated intelligent businessman would consider such a property as Fairhaven to be correctly characterised as an investment. He would consider it to be a business asset to be exploited as part of the provision of services going well beyond investment as such.'

Is this a first round knockout?

There was an indication that a number of other cases 'have been stood over pending the result in this case' and so the decision may have wider implications than this one case. In such circumstances, it might be expected that HMRC will take the case further but no appeal to the Upper Tribunal by HMRC has yet appeared on the register.

To share or not to share

Whilst the tax saving impact of sharing is probably the last consideration when getting married, this unique relationship may offer some opportunity to minimise tax liabilities. One such example is where certain assets are jointly owned assets such as land and buildings.

Where property is held jointly by spouses, any rental income arising is generally regarded as belonging to them in equal shares. This equalisation of income could be a useful method of ensuring that both the personal allowance and 20% tax band are used.

Where spouses have unequal beneficial entitlements, a formal declaration can be made so that the income is split according to their actual beneficial entitlements. It should be stressed that it is not possible to choose arbitrarily how such income should be divided. The split should properly reflect the genuine underlying ownership of the asset concerned, otherwise, the declaration will be invalid. It is also not possible to make the election if the property is legally held as joint tenants, only as 'tenants in common'.

This is because 'joint tenants' are treated as owning an undivided interest in the whole asset.

The declaration must be jointly made by both parties on the prescribed form, known as Form 17. The completed form must then be submitted to HMRC within 60 days of the date on which it was made. It takes effect for income arising on or after the date of the declaration and applies until such time as the beneficial interests change. It cannot be used in respect of income from close companies, generally this means family companies.

If you would like us to carry out a review of your specific personal tax position and identify relevant opportunities for tax saving then please contact us.

New Government initiative helps small businesses

Small businesses seeking to obtain finance may be able to benefit from the National Loan Guarantee Scheme (NLGS) – a new Government initiative launched in March 2012 which enables eligible businesses to obtain a discounted interest rate on loans from banks.

The scheme allows banks to raise up to £20 billion of funding, guaranteed by the Government, to lend directly to smaller businesses. This will enable participating banks to borrow at a cheaper rate and these banks will pass on the benefit they receive from these guarantees to smaller businesses through cheaper loans.

Qualifying businesses must have annual turnover of less than £50 million (including group turnover if applicable) and there will be a minimum loan period of 12 months. Businesses participating in the scheme will receive a 1% discount on the interest rate on the loan, which means a business requiring a loan of £500,000 could benefit from a potential saving of £5,000 per year in interest – savings that would not have been possible had they taken out the loan outside of the scheme.

HM Treasury will put in place strong scheme rules obliging banks to pass on the lower cost of funding to borrowers. This will include an independent audit to ensure that the banks are complying with the terms set out by the Treasury. Participating banks will also have to submit quarterly reports containing information on the loans they have made under the scheme.

Various banks have opted to participate in the scheme and businesses requiring finance should contact participating banks directly. The Government will not be involved in the lending decision, nor are they guaranteeing the individual business loans. The banks will bear all risks associated with lending to businesses and therefore their usual lending policies will apply.

The Government has not currently placed any restrictions on the banks as to the size of the loans they are to issue, although due to the additional administration required, it may be unlikely that banks will offer exceptionally small loan amounts. Interest rates on NLGS loans may vary between banks as each bank operates their own pricing models. Under the scheme, lending offered can be in the form of new term loans, hire purchase or leasing arrangements, although overdrafts and business credit cards are not covered.

Some of the banks participating are yet to release details of their terms and rates. One bank which has published its terms is Barclays. It is currently offering eligible businesses the discount in the form of a cashback over a five year period on NLGS loans of £25,000 or more.

At a time when it is becoming increasingly difficult for small businesses to obtain finance, this scheme has been set up to help small businesses access cheaper finance, so that savings on interest can be reinvested back into their businesses.

There are various other schemes available where a business does not qualify or finds the NLGS loans unsuitable, such as the Enterprise Finance Guarantee (EFG) scheme. This was set up by the Government to help businesses with a lack of financial history or collateral to obtain finance.

Further information can be accessed via the links provided but please do contact us if you require assistance in presenting your application for finance.

More information on different finance options and Government schemes can be found on www.businesslink.gov.uk

For more information on the participating banks in the NLGS scheme or to find out more about the individual business eligibility criteria visit www.hm-treasury.gov.uk/nlgs.htm

Capital Allowances - changes ahead for cars

The cost of acquiring capital equipment in a business is not a tax deductible expense. Instead, tax relief is available on certain capital expenditure in the form of capital allowances.

The allowances available depend on what you are claiming for and are not generally affected by the way in which the business pays for the purchase. For example, where an asset is acquired on hire purchase (HP), allowances are generally given as though there was an outright cash purchase and subsequent instalments of capital are ignored. However, finance leases, often considered to be an alternative form of purchase and which for accounting purposes are included as assets, are denied capital allowances. Instead, the accounts depreciation is usually allowed as a tax deductible expense.

Any interest or other finance charges on an overdraft, loan, HP or finance lease agreement to fund the purchase is a tax deductible expense and capital allowances are not available.

Alternatively, if a business rents capital equipment, often referred to as an operating lease, then as with other rents this is a tax deductible expense and capital allowances are again not available.

Plant and machinery

This includes items such as machines, equipment, furniture, computers, cars, vans and similar equipment that are used in a business.

Expenditure on all items of plant and machinery are pooled rather than each item being dealt with separately, with most items being allocated to a main rate pool. However, assets which are used partly for private purposes by a sole trader or partner in a partnership are allocated to a single asset pool to enable a private use adjustment to be made.

Most businesses are able to claim an Annual Investment Allowance (AIA) on most plant and machinery which provides immediate 100% tax relief on qualifying annual expenditure. Relief is given on the full cost up to a maximum allowance of £25,000 for a full year (previously £100,000). Special rules apply to determine the AIA for an accounting period that straddles April 2012. Please check with us if required.

A writing down allowance (WDA) on the main rate pool of 18% (previously 20%) is available on any expenditure incurred in the current period not covered by the AIA or not eligible for AIA as well as on the balance of expenditure remaining from earlier periods.

Certain expenditure on fixtures in buildings, known as integral features, is only eligible for an 8% WDA (previously 10%) so is allocated to a separate special rate pool. Certain cars are also allocated to this pool.

Where the accounting period straddles 1/6 April 2012 it will be necessary to calculate hybrid WDA rates which will give a rate between 20% and 18% (or between 10% and 8%) for that period.

Special rules for cars

Other vehicles are treated as main rate pool plant and machinery but cars are not eligible for the AIA. The treatment of car expenditure acquired from 1 April 2009 for companies and 6 April 2009 for unincorporated businesses is based on the CO_2 emissions of the car. Pre April 2009 acquisitions (not dealt with here) were generally dependent on cost.

A 100% first year allowance (FYA) is available on new low emission cars purchased (not leased) by a business. This is generally available, where a car's emissions do not exceed 110 grams per kilometre (gm/km), until 31 March 2013.

Type of car purchase	Allocate	Allowance
New low emission car not exceeding 110gm/km CO_2	Main rate pool	100% allowance
Not exceeding 160gm/km CO_2	Main rate pool	18% WDA (previously 20%)
Exceeding 160gm/km CO_2	Special rate pool	8% WDA (previously 10%)

Changes ahead

Legislation will be introduced next year to reduce the CO_2 threshold for a main rate pool car attracting the 18% rate. This will reduce to 130gm/km CO_2 to match EU emissions targets for 2020. This will apply to cars acquired on or after 1 April 2013 for companies and 6 April 2013 for unincorporated businesses.

The availability of the 100% FYA on new low emission cars will be extended for a further two years for purchases from 1 April 2013 but only where emissions do not exceed 95gm/km.

Type of car purchase	Allocate	Allowance
New low emission car not exceeding 95gm/km CO_2	Main rate pool	100% allowance
Not exceeding 130gm/km CO_2	Main rate pool	18% WDA
Exceeding 130gm/km CO_2	Special rate pool	8% WDA

A matter of give and take

Child Benefit is currently paid to anyone with a child under 16, or aged 16 -19 if they are in relevant education or training. The amount is £20.30 a week for the first child and £13.40 a week for each subsequent child. Child Benefit is not currently means tested but this is set to change.

Changes ahead

For a taxpayer who has income in excess of £50,000, where either they or their partner is in receipt of Child Benefit, a new tax charge is to be introduced from 7 January 2013.

The effect of the charge is to claw back the benefit of some or all of the Child Benefit payable.

How does the clawback work?

The income tax charge will apply at a rate of 1% of the full Child Benefit award for each £100 of income between £50,000 and £60,000. Where both partners have income in excess of £50,000 the charge will apply to the partner with the higher income. The charge does not apply to joint household income. The income considered for this calculation is 'adjusted net income'. Broadly, this is gross taxable income from all sources reduced by losses and specific reliefs such as charitable Gift Aid donations and pension contributions but before the personal allowance is given.

Where a taxpayer has adjusted net income of £60,000 or more then the charge has the effect of cancelling out the Child Benefit paid.

Other options and considerations

Child Benefit claimants will be able to decide not to receive Child Benefit payments if they or their partner do not wish to pay the new charge.

However, some individuals should still continue to make a claim (even though no payment is to be received) to qualify for National Insurance credits, as these contribute towards State Pension entitlement. This is generally relevant for a non working partner who is at home caring for any children under 12.

Please contact us if you would like more information about this issue.

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