CLIENT BULLETIN

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GOODS TAKEN FROM STOCK FOR OWN CONSUMPTION

Tax Inspectors are becoming more and more enthusiastic about enforcing the longstanding rule that, where a trader takes goods from stock for his own use, the tax computation is to be prepared on the basis that he sold those goods to himself at the same price he would have charged a customer in the usual course of business. The example frequently given is that, if a shopkeeper takes a packet of fish fingers home for his tea, then he should record that as a sale to himself at the full retail price. In practice, of course, real life is often less simple than the theory: what, for example, if the fish fingers were out of date, or the box was squashed and torn?

However, 'stock' can mean far more than the goods offered for sale on a retailer's shelves. Suppose, for example, that a builder builds a house on land he owns, intending to sell it on completion. However, having built it, he decides he likes it so much he will keep it, and live in it himself. Because the house was originally built for onward sale, it became part of the builder's stock-in-trade, and so was 'taken from stock' when the builder decided to live in it himself. The transfer to private use will count as a withdrawal from stock at market value, so crystallising a taxable profit.

It seems unfair that a trader is deemed to make a taxable profit by 'selling something to himself'. However, in many circumstances, the charge can be avoided, quite legitimately, simply by making sure that the relevant items never become trading stock in the first place. For instance, a retailer could use his trade card to make purchases earmarked from the outset for his own use. (This would mean, for example, buying a whole 'outer' of fish fingers for the home freezer; buying tinned or bottled goods in this way might be more practicable!) In the case of the builder, the amount of tax at stake would make it very worthwhile to consider earmarking the house for private occupation before construction begins. This need not preclude buying materials on trade terms, or using tradesmen employed in the builder's business.

It is vitally important, whether the goods in question are low-value commodities such as groceries, high-value items such as motor cars or antiques, or houses constructed by builders, that the arrangements are set up correctly *from the outset* and the necessary paperwork kept to create an 'audit trail' demonstrating that the relevant items never became trading stock. Because of the infinite range of individual circumstances, it is impossible to give reliable advice in general terms, and so we would recommend clients to contact us for individual advice tailored to their own businesses or projects.

ENTREPRENEURS' RELIEF

When the new capital gains tax Entrepreneurs' Relief was first announced in January 2008, it was stated that trading premises occupied by a company or a partnership would not qualify for the relief if they were owned by a shareholder or partner personally *and* he or she charged the company or partnership a full market rent. Relief would be restricted proportionately where a reduced rent was charged, or where the rent was not charged for the whole period the premises were occupied by the company or partnership. However, a last-minute change to the Finance Bill provides that rent paid before 6 April 2008 (the start date for the new relief) will be ignored in this calculation. Accordingly, if no rent is charged from 6 April 2008, full Entrepreneurs' Relief will remain due.

ANNUAL INVESTMENT ALLOWANCE

The new Annual Investment Allowance (AIA), introduced in April, allows businesses – companies, partnerships and sole traders – to claim 100% first-year allowances for expenditure on most purchases of machinery, equipment and vehicles, other than motor cars. However, the Conservative Party has made it clear that, should they win the next General Election, they will abolish the AIA and instead reduce the small companies rate of corporation tax back to 20%. (The small companies rate was 20% until March 2008; it rose to 21% in April this year and is scheduled to rise again to 22% in April 2009.)

There must be a General Election no later than May 2010, though the Government may choose to 'go to the country' earlier, with the earliest likely date being May 2009. Without wishing to take a political stance, it is obvious that the Conservative Party may win that Election, so there is an argument in favour of incurring any planned capital expenditure on machinery, equipment and vehicles (other than motor cars) within the next year, so as to be sure of the 100% allowance.

Qualifying expenditure is capped at £50,000 a year. The main point to watch is that, if the trader's accounting year spans 6 April 2008 (1 April 2008 for companies), the cap for the first year is reduced proportionately. For example, if a company's year end is 31 December, the maximum expenditure qualifying for the 100% Annual Investment Allowance for the year to 31 December 2008 will be £37,500 (nine-twelfths of £50,000, as there are nine months between 1 April and 31 December 2008). The company could however purchase £37,500 of machinery in December 2008 and £50,000 in January 2009, and so qualify for 100% first-year allowances of £87,500 over the two years.

The detailed rules are, inevitably, more complex than that short summary would suggest, so please contact us for individual advice if you are planning a substantial investment in machinery, equipment or vehicles.

EMPLOYEE BENEFITS THAT CAN COST YOU NOTHING

The general rule is that an employee has to pay tax on every benefit provided by his employer. However, a rather eclectic assortment of benefits has been exempted from tax, usually for policy reasons that have now been lost in the mists of time.

It is feasible for most of the tax-exempt benefits to be provided by small employers as well as large. For example, it is well-known that there is no benefit-in-kind charge on meals provided in canteens or staff dining rooms. What is not so widely appreciated is that the legislation does not require the employer to operate his own catering facility: he can arrange either for his employees to use a canteen or staff dining room operated by a nearby, unrelated enterprise; or for food to be delivered to his own premises by outside caterers. The main condition is that broadly the same facilities must be made available to all employees (or at least, to all employees working at the same site).

Another possibility is free or subsidised transport to and from work in a coach or minibus, or lunchtime trips to local shopping centres, *etc*. The employer need not own his own vehicle – he could for example buy in the service from a local coach company, or enter into a cost-sharing arrangement with another local employer.

However, most people will probably prefer to drive to work and the provision of car parking spaces at or near the workplace is also free of tax. It is sometimes assumed that the exemption applies only where the vehicle is parked on the employer's premises (the 'company car park'), but in fact it applies equally if the employer has to pay for the parking space, for example in a nearby multi-storey car park. And whereas the exemption for a coach or minibus service applies only if the facility is 'available generally to employees', workplace parking is exempt even if the employer offers it only to selected individuals. It is rumoured that the exemption for workplace parking was born when some Tax Inspectors were threatened with a benefit-in-kind charge for parking their cars on Government premises – but it is only a rumour.

The employer can also provide the use of a mobile 'phone – including line rental and call charges – without triggering a tax charge. This is so even if there is no business use of the 'phone. The main point to watch here is that it would be sensible for the employer to impose some ceiling on the call charges he is willing to pay, as unrestrained use of a mobile 'phone can be alarmingly expensive. The 'phone may be hand-held or installed in a vehicle, or both, provided there is only one connection (*i.e.*, only one number).

Next, it is common practice for employers, especially in Central London, to offer interest-free season ticket loans. No tax charge arises on the benefit of being able to borrow the money interest-free, unless the amount outstanding exceeds £5,000. What is less well known is that the same tax exemption applies to loans for any other purpose, provided the sum total of all loans to the individual employee does not exceed £5,000. The disadvantages from the employer's point of view are, of course, that it is an expensive benefit to provide, in cash flow terms, and even if repayments are deducted from salary, there is always the risk of default. The employer needs to be sure that the loan is within the employee's financial comfort zone.

All the exemptions are subject to complex terms and conditions – for example, there is some convoluted legislation to draw a line between minibuses (which may qualify for the travel-to-work exemption) and large motor cars (which do not qualify). Accordingly, if you are planning to provide any benefit-in-kind or facility for employees, we strongly recommend that you discuss, with us, the most tax-efficient way of providing it, before committing yourself to any expenditure.

Finally, if there is no specific exemption, and no scale charge (as for motor cars), the general rule is that the tax charge on a benefit-in-kind is based on the cost to the employer of providing that benefit. Sometimes it is possible to provide worthwhile benefits at no cost to the employer. For example, he may be able to arrange for discounts for employees at gyms and other local facilities, or access to cash-and-carry warehouses.

RULES CHANGE FOR PENSION CREDIT

Pension Credit is a tax credit for older people living on modest incomes. The rules for calculating the benefit are quite complex – the booklet issued by the Department for Work and Pensions says that: 'If you or your partner are aged 60 or over, you will probably get Pension Credit if the money you have coming in is less than £124.05 a week if you are single, or £189.35 a week if you have a partner.' For those aged 65 or more, the figures are £174 for a single person and £255 for a couple, with higher limits applying to claimants with a severe disability, or who are caring for a severely disabled person, or who are still paying a mortgage on their home. Pension Credit is not dependent on the claimant's National Insurance contribution record.

Because the calculations are complicated, and because it is not always appreciated that an older person can still claim Pension Credit even if he or she is living with his or her grown-up children or other relatives, many people who are entitled to Pension Credit do not claim it. Now would be a good time to consider whether a claim should be made, because the rules are about to change.

At the moment, it is possible to backdate a claim by up to a year. However, if the claim is received by the Pension Service (a branch of the Department for Work and Pensions) on or after Monday, 6 October 2008, it will not be backdated for more than three months.

Claims may be made by telephoning the Pension Service on 0800 99 1234 (8 am to 8 pm, Monday to Friday only, with textphone on 0800 169 0133), or a copy of the booklet *Pension Credit – Do I qualify and how much could I get?* can be obtained from 0845 7 31 32 33. Alternatively, information is posted on the website www.thepensionservice.gov.uk/pensioncredit.

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