money matters

Winter 2012

TIFFIN tg GREEN

Suzi's Fully Qualified!

Congratulations to Suzi Hunt as she passed her final ACCA exams this summer.

Suzi joined Tiffin Green in June 2006 when she was just 19 – fresh from studying Business 'A' levels at Thurrock College.

Conscientious, and determined to carve a career in the accountancy profession, Suzi successfully completed her studies with the Association of Accounting Technicians (AAT) before progressing to the Association of Chartered Certified Accountants (ACCA) course in 2008.

During her six years in our accounts department Suzi has developed a diverse portfolio of owner managed business clients; she particularly enjoys working on balance sheets, dealing with the intricacies of financial statements and focusing on client's tax requirements.

Combining full time work with study and refurbishing a new home, that she share's with boyfriend Wayne, has meant 2012 has been an exceptionally busy year for Suzi. She also has a head for heights…after enjoying the thrill of a 10,000 feet sky dive and the breath-taking views of a 5000 feet hot air balloon ride, next on the list is hang-gliding!

Dividend or bonus

Now is a good time for companies with a 31 December year-end to decide if further company profits should be withdrawn, and, if so, choose between a dividend or a bonus.

If your aim is to minimise tax, taking a dividend is now always more tax-efficient than paying a bonus – especially if your company pays corporation tax at the 20% small profits rate; although the main saving comes from avoiding NICs – a combined employee/employer minimum of 15.8% when a bonus is paid.

However, paying a bonus can have advantages. Firstly, dividends must be paid in proportion to shareholdings – this could cause problems if you own less than 100% of the company. Also, dividends do not count as pensionable earnings. If you want to raise a personal mortgage, lenders are generally aware of how owner-managed companies operate and should treat dividends and bonuses equally. Please contact us for advice.

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The many layers of VAT

VAT can easily give even the most seasoned of tax experts a headache, and the fact that European Union VAT rules take precedence over UK law just adds to the complexity.

Take the 'simple' matter of buying a sandwich. When you buy a sandwich from a sandwich shop or other fast food retailer you will be charged VAT if you want to eat it on the premises.

The European Court of Justice (ECJ) has recently ruled that where the level of service involved is minimal, then VAT should not be charged on cold food sold for immediate consumption even if it is 'eaten in'. Sandwich chain Subway has filed a test case against HMRC, and many other retailers are expected to follow suit.

Toasties and chickens

Subway is also involved in the continuing fallout from the 'pasty tax'. The tax charge on pasties was dropped, but toasted sandwiches are subject to VAT. Subway hopes to have the issue debated in Parliament, and has recently appealed a 2010 case decided in HMRC's favour.

Subway argued that its sandwiches must be served toasted in order to comply with food safety regulations. The decision again went HMRC's way, but Subway may take the case to the Court of Appeal. Not to be outdone, Morrisons supermarket is organising a campaign to reverse the 20% VAT charge that now applies to rotisserie chickens.

The company argues that the majority of its customers make purchases to eat later, rather than as take-away food.

Bad debt relief

The outcome of another conflict between UK and EU law means that businesses may now be able to claim VAT refunds on bad debts going back nearly 40 years. VAT bad debt relief can generally be claimed once a debt is more than six months overdue, but the conditions were once much stricter – the customer had to be insolvent, and a retention of title clause precluded any relief.

In a case brought by BT and General Motors' finance arm, the Tribunal ruled that the conditions previously imposed were not compatible with EU law. This means that refunds can be claimed for the period between 1973 (the year VAT was introduced) and 1997 (when VAT bad debt relief rules were rewritten).

Given the amounts involved HMRC is likely to appeal, possibly to the ECJ. We can help with a submission of a historic bad debt relief claim if your business is due a refund, although one practical difficulty could be finding the documentation after all this time.

Energy-efficient products

If all that isn't enough, there is one more conflict that could well end up in the ECJ. As part of its drive to reduce carbon emissions, the Government introduced a reduced rate of VAT of 5% for energy-efficient products, such as draught insulation and solar panels.

The European Commission has said that such a supply is beyond the range of items for which the reduced rate is permitted, and therefore the standard rate of 20% should be charged instead.

The Government disagrees with the Commission's findings, but will study the arguments before deciding on how to proceed.

A bit more certainty on residence

The Government plans to introduce its new statutory residence test (SRT) from April 2013. This should make it much easier for you to establish whether or not you are a UK resident if your residence status is currently unclear.

HMRC will provide an interactive online tool so that individuals can self-assess their residence status, and a prototype is already available. The aim of the SRT is to ensure that an individual cannot become non-resident without reducing their UK connections, but it recognises that people should not be treated as resident where they have little connection with the UK.

There will be some situations where a person is always treated as UK resident – if they stay here for 183 days or more during a tax year, if their only home is in the UK, or if they work here full-time. In other situations, a person will be automatically treated as being not resident in the UK, for example, staying here for fewer than 16 days in a tax year or leaving for full-time work overseas. The 16-day condition increases to 46 days if a person has not been resident for any of the three previous years.

If your status is not definite, then residence will be determined by a trade-off between connection factors and 'days of presence'. It will be harder for someone leaving the UK to relinquish residence than for a new arrival to acquire it.

Days in the UK	Coming to the UK	Leaving the UK
16 to 45	Not resident	Resident if 4 factors apply
46 to 90	Resident if 4 factors apply	Resident if 3 factors apply
91 to 120	Resident if 3 factors apply	Resident if 2 factors apply
121 to 182	Resident if 2 factors apply	Resident if 1 factor applies

Connection factors are:

- Having immediate family here;
- Having UK accommodation (made use of during the year);
- Doing substantive work here (40 or more days a year);
- A UK presence in either of the two previous tax years (more than 90 days); and
- Spending more time here than in another country (only relevant for leavers).

The SRT will therefore be particularly welcomed by people who leave the UK without making a clean break – for example, where a house is retained.

Income tax reliefs: will the cap fit?

The Government recently launched its consultation on capping unlimited income tax reliefs.

As announced in the March 2012 Budget, an individual will only be able to claim reliefs up to the higher of £50,000 or 25% of their income.

The cap will only apply to those reliefs that are offset against a person's general income and which are not currently capped, but it will not apply to reliefs related to charitable giving. So it will mainly apply to certain loss reliefs and relief for qualifying loan interest, although the ability to carry forward trading losses against future trade profits is not affected. The most important losses that could be restricted are:

- **Trade loss relief** – claimed against income (and potentially chargeable gains) for the loss making year and/or the preceding year. Any restricted loss can still be carried forward.
- **Early trade losses relief** – a loss made in the first four years of trading can be set against income for the preceding three years. Any restricted loss can still be carried forward.
- **Share loss relief** – available for what would otherwise be a capital loss on the disposal of shares in unquoted trading companies. Relief is available against income for the year of the disposal and/or the preceding year. Any restricted loss can still be used as a capital loss and set against chargeable gains.


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The first tax year to be affected will be 2013/14, but the cap could apply to earlier years if a loss made after 5 April 2013 is carried back. When calculating the 25% limit, the income figure used will be adjusted so that individuals making pension contributions and/or charitable donations are all treated the same regardless of how these deductions are given. The cap itself will apply to each year relief is claimed.

The other relief most affected will be qualifying loan interest, including where money is borrowed personally for use in the borrower's company. Relief is only available against income for the year that interest is paid, and will be lost if the cap applies. This might mean having to reorganise how a business is financed, with the company borrowing money rather than the individual.

The proposals may yet change, but if you think you might be affected, please get in touch to discuss what can be done to minimise the impact.

'Wholly and exclusively' deductible?

To be deductible, an expense must be 'wholly and exclusively' for trade purposes. This sounds simple enough, but the definition of 'wholly and exclusively' has been the subject of endless dispute between businesses and professionals and HMRC.

If a cost can be found to have a 'duality of purpose', it will invariably mean that an expense is not allowed. The famous case of *Mallalieu v Drummond* concerned a barrister who failed in her claim to deduct the cost of her clothing as a business expense, although she could not appear in court without it. But the clothing also kept her warm and clad, so the expenditure was found to have a dual purpose.

This reasoning also applies to other everyday expenses like food, medical costs (even to treat work-related conditions) and rent or mortgage payments, even if working from home saves on travelling time and allows the taxpayer to do more work.

Two recent cases concerning legal fees incurred by businesses show just what a grey area the definition of 'wholly and exclusively' can be. In *Linsdale Post Office & General Store v HMRC,* two brothers in partnership defended a claim by their sister that she should be an equal partner because she had allegedly contributed capital.

The Tribunal's decision was that the brothers' legal fees were an allowable business expense because they were incurred while defending the business's assets. This follows the general principle that money spent is deductible if it is with a view to preserving the existing business, its goodwill or assets. The payment simply maintains the existing position, without addition or improvement.

However, a few days later, the opposite conclusion was reached in the case of *Purolite International Ltd v HMRC*. The company's owners – two brothers and a US company – faced large legal fees as a result of the US company supplying goods to Cuba in contravention of US law.

Purolite contributed towards the US company's costs, on the grounds that it risked losing its exports to the US if the case was lost.

On appeal, the Tribunal held that Purolite's involvement in the case had a 'dual purpose' – not only were the brothers safeguarding their export business, they were also defending themselves from criminal charges – and so the fees were not a deductible expense.

In an area of such conflicting precedents, always seek expert advice.

UKBA gets tough on employers

Employers have been put on notice that the UK Border Agency (UKBA) is cracking down on illegal workers in the UK and is holding employers accountable for any failure to check their employees' visa status.


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The UKBA has just published new information and guidance for employers and expects full compliance. Whether your organisation employs highly paid executives or part-time students it is important to be fully aware of these employer responsibilities. Even top companies such as Tesco are not immune, and the resulting bad publicity may be more damaging than the penalties that are imposed.

During a recent UKBA investigation, around 20 foreign students of 11 different nationalities were found working between 50 and 70 hours a week at one of Tesco's warehouses. The current UK visa regulations allow foreign students to work only 20 hours a week during term time. The operation was part of an ongoing campaign to tackle visa abuse, which has resulted in over 2,000 offenders being deported in just five months. The potential fine for the employer is £10,000 for each illegal worker, with criminal prosecution also a possibility. So it is important to ensure that all of your employees have the right to work in the UK and that you comply with any restrictions.

A potential employee's documents should be checked before they are employed. If a person has a time limit on their right to work, then the document check should be repeated at least every 12 months. Where there are restrictions as to the type of work that a person can do or the number of hours they can work, these work conditions must not be breached. The UKBA website provides detailed guidance for employers. As Tesco has found out, students can be a particular problem. The rules have changed several times in recent years, and will vary according to when a visa was issued.

At the opposite end of the pay scale, listed companies could face fines and other sanctions under EU plans to ensure that 40% of non-executive board seats are occupied by women – compared to less than 14% at present.

The proposal has yet to be formally introduced, and is being strongly opposed by the UK and several other countries. It would apply to employers with more than 250 employees or £40 million of turnover and would be operative by 2020.

Most self-employed people whose income is below the VAT registration threshold will have the option of calculating profits on a simplified cash basis from April 2013 if Government proposals go ahead. Profits will be on a tax-year basis, and calculated as receipts less allowable business payments and simplified expenses. The cost of equipment will be allowed as an expense, so capital allowance computations will not be necessary, but no deduction will be given for loan interest. Motor expenses will be based on a standard mileage rate, and flat rate expenses allowed where the home is used for business purposes.

KEY TAX DATES

Every month

1 Annual corporation tax due for companies with year ending nine months and a day previously, e.g. tax due 1 January 2012 for year ending 31 March 2011.

14 Quarterly instalment of corporation tax due for large companies (depending on accounting year end).

19 Pay PAYE/NIC and CIS deductions for period ending 5th of the month if not paying electronically. Submit CIS contractors' monthly return.

22 PAYE/NIC and CIS deductions paid electronically should have cleared into HMRC bank account.

30/31 Submit CT600 for year ending 12 months previously. Last day to amend CT600 for year ending 24 months previously.

File accounts with Companies House for private companies with year ending nine months previously and for public companies with year ending six months previously.

If the due date for payment falls on a weekend or bank holiday, payment must be made by the previous working day.

November 2012

2 Submit employer forms P46 (car) for quarter to 5 October 2012.

December 2012

5 Chancellor's Autumn Statement announcing updated plans for the economy.

30 Last day to submit 2011/12 tax return online to have unpaid tax of under £3,000 collected through the 2013/14 PAYE code.

January 2013

7 Start of withdrawal of child benefit where income over £50,000.

14 Due date for CT61 return and CT payment for quarter to 31 December 2012.

31 Submit 2011/12 self-assessment return online. Pay balance of 2011/12 income tax and CGT plus first payment on account for 2012/13.

February 2013

1 Initial £100 penalty imposed where the 2011/12 return has not been filed or has been filed on paper after 31 October 2012. Further £300 penalty or 5% of the tax due if higher where the 2010/11 return has not yet been filed.

2 Submit employer forms P46 (car) for quarter to 5 January 2013.

28 Deadline for people who have notified their intention to take part in HMRC's direct selling campaign to make their disclosure and pay all liabilities.

March 2013

1 Third 5% penalty on any 2010/11 tax still unpaid.

2 Last day to pay 2011/12 tax to avoid automatic 5% penalty.

31 Last few days to use any CGT and IHT annual allowances and exemptions and to invest in an ISA in 2012/13.

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