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THE W&S CLIENT BRIEFING

Thank you Mr Brown!

The little matter of trusts and Inheritance Tax ('IHT') was already complicated enough for most people before Gordon Brown's Budget bombshell in March.

We now have the fine detail and, although some aspects have been watered down, the need for a review of existing trusts and future IHT-planning is essential. This is a huge area but a brief summary of some of the key points is as follows:



- It will no longer be possible to set up a life interest or accumulation and maintenance trust ('A&M trust') during lifetime, after 22 March 2006 without it being subject to the same IHT regime as discretionary trusts
- This means a 20% up-front charge on the value of assets settled in excess of the settlor's nil rate band (currently £285,000), a 6% charge every 10 years on the value of the trust assets to the extent that exceeds the nil rate band, and an exit charge of up to 6% if trust assets are appointed out to beneficiaries
- Life interest trusts set up before 22 March 2006 remain exempt from these charges, but the exemption generally ceases if the life tenant changes after 5 April 2008 unless it passes on their death to their spouse or civil partner

- Existing A&M trusts come into the new regime on 6 April 2008; this can be avoided if the terms of the trust are amended so that the beneficiaries become absolutely entitled to both the trust capital and income by age 18; this is generally considered too early for most beneficiaries and a reduced IHT charge of up to a maximum of 4.2% has been introduced for trusts where the beneficiary takes both capital and income at age 25; this level of tax charge might be considered acceptable in order to retain control over trust assets for a longer period
- It is not all bad news though, and in some instances it might be possible to now hold-over gains when assets are transferred and where such relief was not available under the old rules

- Discretionary will trusts will not be caught by the new rules but will-planning involving trusts needs further care and thought in future
- Trusts for the disabled are also normally exempt from the new regime

Although the news is generally unfavourable, there are still plenty of opportunities to mitigate IHT liabilities both with and without the use of trusts. The key thing is to recognise the need for some action and to then seek proper guidance and advice on the best way forward.



"I thought this was about financial planning not pizzas."

For further details, please contact **Colin Barratt**.



Time to take cover?

It is fair to say that HM Revenue & Customs ('HMRC') has some challenging targets to meet in terms of increasing the tax yield from taxpayers, and businesses in particular.

In setting about this task HMRC is adopting more robust tactics when making enquiries into accounts, tax returns and associated documents. Matters which previously might have passed without comment are now being challenged and pursued with vigour, often over a number of years. Besides arrears of tax, this also brings extra collection proceeds in the form of interest and penalty charges.

This approach seems particularly prevalent in relation to employer compliance reviews. Areas under sustained attack include:

- The status of any workers not on the payroll
- Termination payments
- Compliance procedures for reporting benefits in kind and expenses payments
- Directors' loan account transactions
- Mileage records

With this in mind, two defence mechanisms are worth considering. Firstly, a review of your PAYE/NI procedures might flag up potential problem areas which need to be addressed. Our experience is that HMRC is less likely to pursue arrears on matters where the business has taken positive steps to correct their procedures. Such a review can also identify ways of reducing future reporting requirements.

Secondly, it is possible to take out tax investigation insurance to cover the professional fees involved in dealing with a HMRC review. Our arrangement with Professional Fee Protection has cover specifically for PAYE/NI matters and the relatively modest premium is good value considering that it doesn't take too many letters and meetings for fees to reach several thousand pounds!

For further details, please contact
David Butterworth



"It all goes to a worthwhile cause, sir - my salary for example."

All change for bonuses and dividends



"Despite money not buying happiness, we'd still like a profit sharing scheme."

A common routine for family companies was to wait until the year-end accounts had been drafted before deciding on levels of bonuses and dividends. Once the profit position was known, decisions would be taken and the appropriate provisions would be made in the draft accounts before they were finalised.

Absolute common-sense you might think. However, the accounting boffins have had a re-think and the tax-man is now on the case as well.

All this stems from Financial Reporting Standard 21 ('FRS 21') dealing with events after the balance sheet date. As

regards dividends, this specifically prohibits any provision in accounts for dividends declared after the year-end date. Some companies like to include dividends in the accounts of the year they relate to. Prior to FRS 21 a provision would achieve this result but

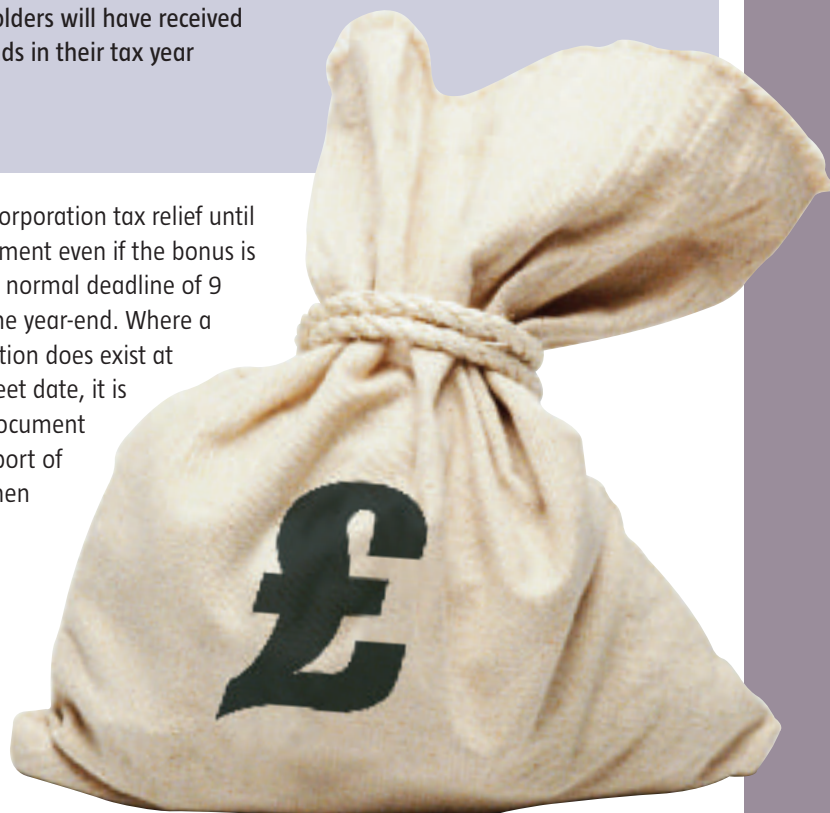
now dividends have to be actually paid in the year otherwise they will feature in the following year's figures. Switching the payment date of dividends can of course have an impact on the tax position of the shareholders as the following example demonstrates:

- Company A normally declares a dividend in June once the draft accounts for the year to 31 March are available
- In the accounts to 31 March 2006 no provision can be made for the dividend paid in June 2006 as a result of FRS 21
- If the directors of Company A declare and pay the next dividend in March 2007 so that it is included in the accounts to 31 March 2007, the shareholders will have received two dividends in their tax year 2006/07
- This could lead to higher tax liabilities for that year, plus possibly increased payments on account for 2007/08

FRS 21 also throws up the possibility of certain bonus provisions being outlawed. The position here is less clear-cut than with dividends. If the company has either a legal or constructive obligation to pay the bonus at the year-end (even though the bonus is actually paid later) a provision is required in the accounts. However, in less formal situations a provision may not be appropriate. If a provision is not made in the accounts, HM Revenue & Customs

will not allow corporation tax relief until the year of payment even if the bonus is paid within the normal deadline of 9 months after the year-end. Where a genuine obligation does exist at the balance sheet date, it is important to document this fact in support of the provision then included in the accounts.

For further details, please contact **John Ardley**





Family values

The financial aspects of a matrimonial divorce or separation may not be the primary concern, but they are still worthy of attention for anyone unfortunate enough to find themselves in these circumstances.

This is particularly so where a business is involved and which will form part of the total assets to be divided between the parties. The valuation of a family business is inevitably subjective and judgemental to some degree. Having an experienced Chartered Accountant on board to help

assess the position can give you peace of mind that the business valuation is in the right ball-park.

Our forensic team works closely with matrimonial lawyers to provide an all-round service to their clients.

The main areas we assist on are:

- Valuation of limited company shareholdings, partnership interests and unincorporated businesses
- Assessment of the liquidity and borrowing capacity of a business where a clean break is to be financed

- Assistance with the completion and review of Forms E showing the financial circumstances of the parties
- Analysis of financial information to help establish whether full disclosure has been made
- Tax advice, particularly in relation to the structuring and timing of asset transfers between the parties

Besides acting for one particular party, we often receive instructions as single joint expert and also participate in mediations and give expert evidence in court. Our membership of the Academy of Experts and Expert Witness Institute ensures that the high quality of our work and advice is maintained.

For further details, please contact **Am Hayer**



"My accountant wants us to stay together."



PLEASE VISIT OUR WEBSITE:

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Spread the word

If you know any friends or contacts who might benefit from our services, please ask them to call us. We will be very happy to meet and discuss their requirements with them on a free and no-obligation basis, to see if we can help.