

- More changes for Scotland's Charities!
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As always if there is a particular subject you would like us to cover please email info@wyliebisset.com

It's no picnic

A regular feature of early summer in Parliament would normally be the annual Finance Bill debates. However, summer 2010 is shaping up to be rather different. Instead, an early Finance Act 2010 received Royal Assent on 8 April (with no debate) before preparations for the General Election got underway. Whilst certain proposals contained in the 2009 Pre-Budget and 2010 Budget reports were included, others were not introduced. Rather, the 2010 Budget notes often stated the following 'the government intends to legislate this measure in a Finance Bill to be introduced as soon as possible in the next Parliament'.

The General Election outcome could be compared to a colourful mixed hanging basket as no one party obtained majority power. A second 2010 Budget took place on 22 June, too late for inclusion in this Bulletin following the resulting Conservative-Liberal Democrat coalition. This means that some of the earlier proposals of the previous government may wither as other tax proposals and policies are put on display. The precise nature and effective operational date of any new tax law remains 'hung' until that second Budget is not only presented but also proceeds through the parliamentary process to become The Finance (No. 2) Act 2010.

We will keep you informed of developments as they unfold but please contact us if there are any issues you wish to discuss.

WB BULLETIN

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Changing childcare

In December 2009, the government announced changes to employer supported childcare and HMRC have now issued further detail on the proposed reform.

The intention is to restrict the amount of tax free childcare vouchers and directly contracted childcare for employees joining an employer's scheme where an employee's earnings and taxable benefits are liable to tax at the higher (40%) or additional rate (50%). There are no changes in respect of workplace nurseries.

Anyone already in a scheme by 5 April 2011 will not be affected by these changes as long as they remain within the same employer scheme.

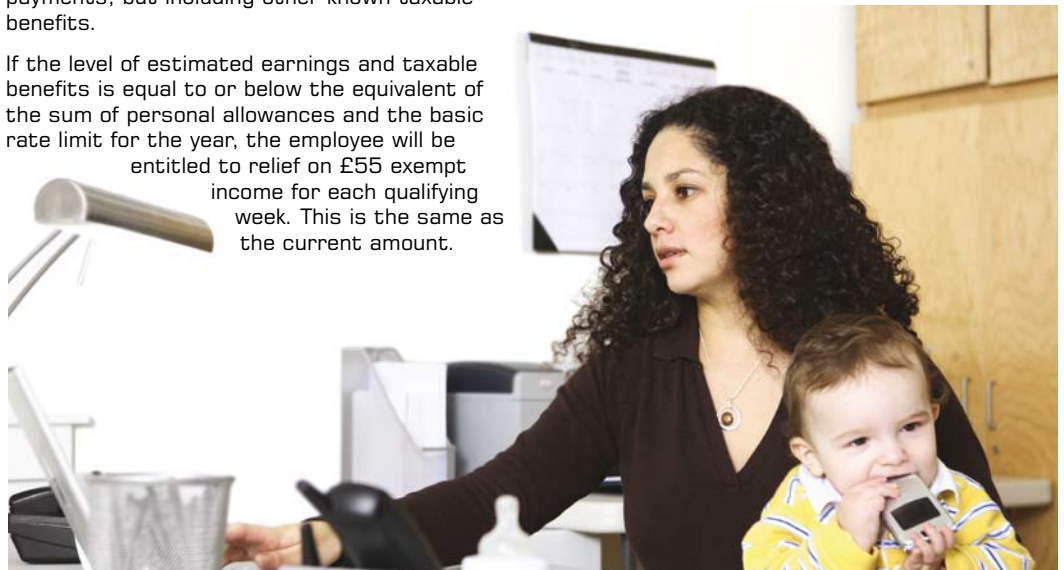
From 6 April 2011, employers who provide employer supported childcare will be required, at the beginning of the relevant tax year, to estimate the level of employment earnings that their employee is likely to receive during that year, ignoring potential bonus and overtime payments, but including other known taxable benefits.

If the level of estimated earnings and taxable benefits is equal to or below the equivalent of the sum of personal allowances and the basic rate limit for the year, the employee will be entitled to relief on £55 exempt income for each qualifying week. This is the same as the current amount.

If the level of estimated earnings and taxable benefits exceeds the equivalent of the sum of personal allowances and the basic rate limit for the year, but falls below the limit at which tax becomes payable at the additional (50%) rate limit for the year, the employee will be entitled to relief on £28 exempt income for each qualifying week.

If the level of estimated earnings and taxable benefits exceeds the equivalent of the additional (50%) rate limit for the year, the employee will be entitled to relief on £22 exempt income for each qualifying week.

If you would like to review your childcare provision options in light of the above please do get in touch.



More changes for Scotland's Charities!

Following their consultation last year the Scottish Government have announced that they will be making some changes to the rules governing the accounts of Scotland's charities. The Charities Accounts (Scotland) Amendment Regulations 2010 will be laid before Parliament later this year and will apply to accounting periods beginning on or after 1 April 2011.

The main changes are summarised below;

The income threshold for Receipts and Payments accounts will be increased to £250,000 (from £100,000). This means that non-company charities with income of less than £250,000 will be able to prepare and file the simpler Receipts and Payments accounts. It is anticipated that this relaxation will apply to 84% of Scotland's charities.

The asset threshold for charity audits will be increased to £3.26million (from £2.8million). This means that charities with income of less than £500,000 (the income threshold for audits) and gross assets of less than £3.26million can opt for the less onerous independent examination of their annual accounts.

It should be remembered that the charity's founding document should be always be checked for any accounting or audit requirements which it contains, but overall these changes will help to ease the reporting burden for a number of Scotland's smaller charities.

In addition, on 28th March 2010 the Public Services Reform (Scotland) Act received Royal Assent. The Act contains a number of the other provisions arising from the consultation which will come into force later this year.

At long last the Act has 'legalised' Trustee Indemnity Insurance by specifically permitting charities to pay for such insurance provided the policy excludes indemnity;

- where a trustee has been fined following criminal proceedings/ breach of regulatory provisions;
- for any legal costs in respect of proceedings where the trustee has been convicted of an offence arising out of their fraud, dishonesty, or wilful or reckless misconduct; and
- where the trustee is liable to the charity for failing to act in the charity's interest.

The provisions in the Charity & Trustee Investment (Scotland) Act 2005 relating to publication of the charity's name and charitable status have been extended to include the charity's website. In future the following details must be shown on a charity's website;

- confirmation that the organisation is a charity
- the charity registration number
- the charity's name as it appears on OSCR's register; and
- any other name by which the charity is commonly known.

The Act also gives OSCR the power to appoint charity Trustees where there are insufficient existing Trustees by number to appoint new Trustees and where the charity's founding document makes no provision for Trustee appointment in such circumstances.

In addition to the provisions mentioned above the Act contains provisions for the removal of Trustees by the Court of Session and for the reorganisation of restricted funds.

Jenny Simpson is head of the specialist Charities Team at Wylie & Bisset LLP.

Take care before you buy

Are you planning to buy an existing building from which you are going to trade? If so, there are opportunities to reduce the effective cost of the purchase by maximising the potential capital allowances claims.

Currently there is limited scope for capital allowances in respect of buildings or structures. However, in some cases a significant part of the purchase price may be attributable to 'fixtures' which qualify for plant and machinery capital allowances.

Typical examples of qualifying fixtures include:

- heating systems
- electrical systems
- sanitary ware
- air conditioning.

These fixtures are 'hidden' within the building which helps to explain why capital allowances claims are missed. Indeed the tax definition of a fixture is an asset which is installed or otherwise fixed in or to a building or land so as to become part of that building or land in law.

Effective allocation

How is the allocation of the overall purchase for the building split between the fixtures and the remaining part of the structure? Clearly it is in the purchaser's interest to maximise the amount attributable to fixtures but there are controls.

- The main control in tax law where a property has been purchased is the need to apportion the overall price on a just and reasonable basis. If an apportionment has been included in the purchase agreement, HMRC can challenge the allocation as not being just and reasonable.
- The viewpoint of the vendor will also be important. If he has previously claimed allowances on the fixtures he may want a low allocation so that he retains some of the allowances he has previously claimed. The vendor is however also constrained by the just and reasonable override.
- A useful facility does however exist, known as a 's198 election' which, within certain limits allows the vendor and purchaser to jointly elect a value for specific fixtures. The vendor and purchaser could therefore agree to allocate a value of £1 to particular fixtures thus allowing the vendor to retain the benefit of allowances previously claimed. Clearly a low figure is not in the

interest of the purchaser because it restricts their entitlement to claim capital allowances. However, if the nature of the election is understood by the purchaser, the agreement to sign the election can be used in the overall negotiations in determining the purchase price of the property.

In any case if you are the purchaser, you may still be entitled to claim certain plant allowances even if a s198 election has been signed. This is because the election only covers fixtures on which capital allowances have previously been claimed.

Example

Eric is buying a nursing home from Amelia for a total purchase price of £1.2 million plus £15,000 for furniture. Amelia wants to include a s198 election in the contract with an elected price of £1. If Eric agrees to this, what effect will this have on his claim for plant capital allowances?

The just and reasonable values are considered to be:

<i>Furniture</i>	<i>£15,000</i>
<i>Lift and central heating system</i>	<i>£90,000</i>
<i>Electrical and cold water system</i>	<i>£40,000</i>

Previous owners (including Amelia) have claimed allowances on the lift and central heating system and furniture.

Eric will still be able to claim plant allowances on the furniture (as it is not a 'fixture', s198 does not apply to that part) and on the electrical and cold water system (as previous owners have not claimed allowances on those fixtures).

As you can see, this is a complex matter, so please talk to us before you sign the contract for the purchase of a commercial property.



A cut above the rest?

A recent tax case concerning a BBC newsreader goes to show just how difficult it is for employees to obtain tax relief for costs they incur in doing their job.

Certain rules which relate to employees only allow tax relief for costs '...incurred wholly, exclusively and necessarily in the performance of the duties.' The courts have interpreted these words extremely narrowly over the years, as seen in the case of Sian Williams. The BBC television newsreader claimed certain deductions in respect of 'travel and subsistence costs' and 'other expenses and capital allowances'. Of these, the following items remained in dispute:

- Professional hairdo and colouring £975
- Professional clothing for studio £3,231
- Laundry of professional clothes £325.

The taxpayer claimed that these expenses were allowable expenses as incurred wholly, exclusively and necessarily in the performance of the duties. The Tribunal found that:

'Even if the Appellant was required by her work to appear with her hair dressed to a certain standard, and even if she would, if asked,

have stated that she was having her hair done because of those requirements of her profession, the hairdressing services were also something that she needed as a human being.'

So, costs incurred which have a dual purpose are unlikely to obtain relief. HMRC have agreed that particular deductions for clothing and equipment can be made from earnings for certain occupations. HMRC negotiates these flat rate deductions with trade unions to apply to certain classes of employees. The flat rate amounts are intended to represent the average annual expense incurred by that class of employees on the repair and replacement of work equipment, such as tools and special clothing.

The flat rate amount is only deductible where the expense falls on the employee and where the employer reimburses part of the expense, the deduction is reduced accordingly.

How do you know if you or your employees work in one of these areas? Can you get a free handout from HMRC for this year and possibly the last four? Well to view an up to date list of occupations and amounts, please visit

www.hmrc.gov.uk/manuals/eimanual/EIM32712.htm

Alternatively, please feel free to get in touch to discuss this further.

Green winner takes it all

Reducing the carbon footprint is both an immediate and longer term issue affecting personal and business investment. In recent times a range of taxation incentives have been implemented where 100% tax relief is available on certain qualifying plant and machinery purchases classified as energy saving.

In addition further proposals were announced in Budget 2010 to encourage investment in further types of energy saving plant and machinery including zero-carbon vehicles.

It could be argued that the raft of tax incentives on offer is of little use, where finance is not available to fund the purchases. However, interest free loans for energy saving projects may be independently available from the Carbon Trust. In fact in its last reported financial year 2008/09 the Carbon Trust offered over £22 million of these Energy-Efficiency loans to replace old equipment.

How does the Energy-Efficiency loan work?

The interest free loan facility is generally available to small and medium sized businesses (SMEs) where CO₂ savings are made from the loan provided expenditure.

The unsecured loans with no arrangement fee range from £3,000 - £100,000 (£500,000 in Northern Ireland). However, the size of the loan and the duration is directly linked to the anticipated CO₂ savings which is now set at 2 tonnes of CO₂ savings per £1,000 of loan (1.5 tonnes in Northern Ireland).

The maximum loan period is generally set at 4 years, the aim being that loan repayments are offset by energy savings.

Examples of energy saving projects include improved heating, refrigeration, lighting, and insulation processes.

Does my business qualify?

An organisation, for example, a sole trader, partnership, company, club or charity, needs to have been trading for at least 12 months and to generally qualify as an SME. Larger businesses in England, Scotland and Wales may apply in limited circumstances but there is no size restriction in Northern Ireland.

The definition of an SME currently used by the Carbon Trust is:

- an organisation with less than 250 equivalent full time employees and where
- either turnover does not exceed €50m or balance sheet total does not exceed €43m.

The business must not have a substantial holding in a non SME business nor be substantially owned by a non SME. Substantial means 25% or more of the shares or voting power.

As the loans are government funded some business sectors are not eligible due to European Union rules on state aid. Excluded business sectors include certain agricultural, fisheries, horticultural, transport, coal and export-related activities.

However farmers in England can apply for a loan of between £3,000 and £20,000.

The transport exclusion does mean that the loans cannot be used to fund vehicle

acquisitions or adaptations. However, new tax relief proposals may at least mean that investments in certain environmentally friendly vehicles will attract 100% tax relief.

For more details about how to apply for an Energy-Efficiency loan and other frequently asked questions see the Carbon Trust website at www.carbontrust.co.uk/cut-carbon-reduce-costs/products-services/business-loans/pages/loans.aspx

What about capital allowances?

The enhanced capital allowances (ECA) scheme for energy saving equipment is a separate scheme which can allow 100% tax relief on individual pieces of equipment (and cars with emissions not exceeding 110g/km) where that equipment features on specific Energy Technology Lists. For further details see www.eca.gov.uk/etl.

Budget 2010 also announced a proposal to introduce a new 100% first year allowance for capital expenditure on new and unused zero-emission goods vehicles. The measure is due to have effect for a 5 year period commencing April 2010 but legislation for the proposal has not yet been put in place.

For further guidance or information on any of the above matters please do not hesitate to contact us.



How to get it out

Recent Finance Acts and Budget proposals may have left many owner-managers feeling a bit hard done to. A top rate of tax of 50% from April 2010 and proposals to increase all rates of national insurance contributions (NIC) from April 2011 send shivers down the spine. So, what is the best way to get your hard earned cash out of a company?

Many owner-managers pay themselves a basic salary and perhaps use tax efficient benefits, such as employer provided childcare vouchers or employer pension contributions (subject to the new, complex, rules on pensions introduced from April 2009).

For many years, higher rate taxpayers have been subject to a special tax rate of 32.5% on their dividend income. This combined with the fact that many companies only pay tax at the small companies rate means it is often beneficial to extract profits using a dividend rather than additional remuneration in the form of a bonus. This dividend rate rises to 42.5% (50% for other income) from April 2010, for those with a taxable income in excess of £150,000.

Example - for a 40% higher rate taxpayer

Christie is to receive a bonus of £60,000 after all taxes from his family company. He is a higher rate taxpayer for 2010/11. This means that he will pay 40% tax on any additional earnings. In addition as he has existing earnings above the employees' upper earnings limit for NIC purposes any bonus will be liable to employees' NICs at 1% only.

Christie	Dividend £	Bonus £
Dividend/remuneration	80,000	101,695
Less: National Insurance (1%)		1,017
Add: Tax credit (1/9)	8,889	
	88,889	
Less: Income tax (@ 32.5% / 40%)	28,889	40,678
Net receipt	£60,000	£60,000

Company

The cost to the company of paying a dividend will be £80,000 whatever the CT rate.

The company will have to pay employer's NIC of £13,017 on the bonus making the gross cost £114,712. The net cost will depend on the rate of CT paid by the company and the comparison is as follows:

CT rate	21%	28%	29.75%
Pre tax bonus cost	114,712	114,712	114,712
CT relief	24,090	32,119	34,127
Post tax cost to company	£90,622	£82,593	£80,585

And what changes if the 50% rate arises?

Derek is to receive a bonus of £60,000 after all taxes from his family company. He has a marginal income tax rate of 50% (42.5% for dividends) for 2010/11 and already has earnings above the employees' upper earnings limit for NIC purposes so that any bonus will only be liable to employees' NICs at 1%.

Derek	Dividend £	Bonus £
Dividend/remuneration	93,913	122,449
Less: National Insurance (1%)		1,224
Add: Tax credit (1/9)	10,435	
	104,348	
Less: Income tax (@ 42.5%/50%)	44,348	61,225
Net receipt	£60,000	£60,000

Company

The cost to the company of paying a dividend will be £93,913 whatever the CT rate.

The company will have to pay employer's NIC of £15,673 on the bonus making the gross cost £138,122. The net cost will depend on the rate of CT paid by the company and the comparison is as follows:

CT rate	21%	28%	29.75%
Pre tax bonus cost	138,122	138,122	138,122
CT relief	29,006	38,674	41,091
Post tax cost to company	£109,116	£99,448	£97,031

And don't forget loans!

Under the post 6 April 2010 regime, some thought might be given to making use of loans rather than dividends. Based on the current rules, there are no plans to increase the 25% rate of tax due from a company, when a director/shareholder is given a loan advance - commonly in the form of an overdrawn current account.

Even if income tax and NIC is due under the benefits rules for cheap loans, loans to owner-managers may still prove to be a more attractive temporary option than a dividend payment. The rate of official interest on such a loan is currently only 4%!

So, a loan of £93,913 to the owner of a small company may create a tax bill for the company of £23,478. In addition an annual employment benefit of £3,756 may arise (4% of £93,913) which is then subject to tax at perhaps 50% (£1,878) plus 12.8% employer NIC (£480). The total taxes at this stage are £23,478 + £1,878 + £480 = £25,836 which is less than an outright dividend payment. There is no employee NIC.

If the loan is waived, the corporation tax of £23,478 is repayable. Instead there is now a charge to tax and NIC (employee and employer) on the amount waived on the individual directly. For tax only, the amount charged is at the relevant dividend rate, so could be 42.5%. However, the waiver can be at a time of the individual's choosing so, maybe that rate will have been abolished by then - you never know!

As there are lots of options please do get in touch before taking any action.