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landtax

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Note from the editor

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Welcome to the latest edition of our newsletter. We continue the theme from the last issue of our newsletter on ways to minimise risk to you, your family and your business. The new 50% income tax rate is a risk to many and we focus this issue on how this will operate and possible ways to minimise its impact on your finances.

We also take a look at the new Community Infrastructure Levy and what this may mean for you.

This will probably be the last newsletter before Janet's retirement and I am sure you will all join me in wishing her all the best for the future.

Half full or half empty?

David Ostle

As I sit down to start to compose this piece for the newsletter, Alastair Darling has just finished giving his Pre-Budget report. I am sure you have made up your minds already about this. Was this an attempt by the Labour Party to remain as the governing power in this country or was it an effort to save the country from a financial crisis involving massive government debt? The sell off of government gilts the next day indicated how the Pre-Budget Report was presumably received by financial investors as there was little substance as to how the debt was to be reduced. Yes, the annual Budget deficit may be being halved over the next four years. But, the overall debt mountain is not being reduced, it is still increasing over the next four years to a predicted £1.5 trillion. How many zeros is that?

Answers by e-mail please...
The Editor regrets there are no prizes.

The bottom line is that this debt will most probably have to be paid back and it is us taxpayers (including the bashed bankers) that the government will be coming to for assistance.

I am sure the 2010 Budget (or Budgets) will be followed closely by tax boffins and the general public alike. Possibly the Budget will have already happened by the time you read this. Whatever, there seems to be no escaping the fact that the Treasury needs money from us (the long suffering taxpaying public) to rescue the country's finances. Part of the measures being brought in to start the pay back of the debt mountain is the new 50% tax rate.

A 50% income tax rate applies from 6 April 2010. The glass is half full if you consider the 50% a low rate when compared to the even higher rates imposed by Labour governments in decades gone by. On the other hand, 50% is high compared to the highest rates of income tax we have had in recent years. Whether your view is half full or half empty, the rate is still 50p of every £1 of income earned once your income reaches certain levels.

Bits and pieces...

Savers Compensation

For any unfortunate soul in the position of having to claim compensation under this scheme when the financial institution with which they have made a deposit is going pear shaped, the rules have been tightened up since the start of the credit crunch. The part of the compensation representing interest on the lost deposit is treated as actual interest and suffers tax at source. Your tax consultant will need to know about this when completing your tax return.

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Having written part, but not all of this missive pre-Christmas, I have picked up the computer keyboard again at home today. It is 6 January and working at home I am, forced to stay put by a massive snowfall last night. I did bring some files home with me yesterday evening to work on as well – there is a January tax return filing deadline looming! I have done the snowman building, snowball fights and sledging and have now slipped away to knuckle down to some quality grown up time.

Bits and pieces...

Online VAT from April 2010

New traders registering for VAT after 5 April 2010 and existing traders whose turnover is over £100,000 will need to file their VAT returns online from 5 April 2010. HMRC is expected to have already written to existing traders by now about the changeover. Time to dust down that PC in the corner...

Imagine the following exchange between a tax adviser and his client snowed in at the office (but where else):

C. When does the 50% rate bite?

TA. When your income exceeds £150,000.

C. So if my income is below £150,000, I am alright then?

TA. Well, if your income is over £100,000, your tax free personal allowance is gradually withdrawn.

C. Do I get to keep any personal allowance?

TA. The personal allowance is withdrawn by £1 for every £2 your income is over £100,000. If your income is over £112,950, there will be no tax free amount.

C. When am I going to have to pay this extra tax?

TA. It will be due on 31 January 2012. Remember, it is an extra 15% because of the first payment on account for the following year being due the same day!

C. What can I do about this?

TA. There are lots of things to keep the taxman's hands off your income.

Our tax system would not be our tax system if there were not little complexities. For instance, the 50% rate does not apply to dividends. Yippee! I hear you cry. The rate is actually 42.5%, now I do not want to bring you back down to earth with a jolt but that is effectively the same as 50% because of the way the system works.

As well as individuals, the new 50% tax rate also applies to both Discretionary trusts and Accumulation & Maintenance trusts, as soon as the basic rate band (max £1,000) has been used up. Amazingly, interest-in-possession trusts are unaffected and income continues to be taxed at just the basic rate. Beneficiaries of interest in possession trusts should plan ahead now as if they fall to be liable to the 50% rate the tax to fund this is 30% of the gross income they will receive from the trust.

In terms of what can be done to keep the taxman at bay, I want to cover the following broad areas:

- business structure
- investments

The mantra often seen in the pages of our newsletters is 'structure, structure, structure', the reason being that the structure of your business and finances affects the tax position. If the structure is optimum then the tax position for you should be the most favourable.

Partnerships are regularly the vehicle of choice for running family businesses as they are very flexible and can achieve good tax outcomes. Companies are often shied away from because of the additional administration, cost and the fact the accounts are made available to public viewing.

A partnership can involve a number of family members and the profit sharing arrangements can be used to good effect to spread income between family members at rates below 50%. For the moment HMRC have shelved plans for rules against income shifting as unworkable, but with anything HMRC are involved with this may not remain the case.

Not so long ago the government introduced a 0% band for company profits. As a result many people incorporated their business to take advantage of this, even those you would not necessarily expect to be involved in tax planning, such as local plumbers etc. Of course the government cried foul play and reversed the tax break.

Bits and pieces...

Online Corporation Tax

As predicted in an earlier edition of this newsletter, HMRC have now set a date for the compulsory filing of corporation tax returns online. Companies will also have to pay their tax electronically. If your accounting period ends after 31.3.2010 or your return has to be filed after 31.3.2011 then paper returns and paying by cheque will be consigned to the dustbin of history. We will guide you through the change so it is as painless as possible.

Companies can be used to great effect in mitigating the higher tax bands. The reasons are:

- company tax rates are between 21 – 30%
- companies do not pay tax on dividends received from other companies
- companies can choose when to pay out surplus income
- company shares can be held in trust so there is flexibility on who ultimately receives income.
- directors and employees pay can be structured tax effectively
- benefits in kind and share schemes can be tax efficient

Generally, the timing of business income and expenditure including capital expenditure will be important.

If you use a trust as part of your overall structure, there may be planning opportunities available. One idea could be to change the beneficiaries interest in the trust fund from an interest subject to trustees discretion to an interest in possession not subject to the trustees discretion. Thus discretionary trusts could navigate around the new higher rate of income tax but only if the terms of the trust deed allow.

There are also some straightforward ways to minimise taxable income from your investments which should not be overlooked. Please seek advice from your investment adviser when considering investment choices as the tax tail should not wag the dog.

- make full use of cash and investment ISAs
- certain NS&I Income certificates
- investing in Venture Capital Trusts
- investing in companies whose shares qualify for Enterprise Investment Scheme
- consider Friendly Society bonds which pay out tax free after 10 years

Other things you can consider doing now before 5 April 2010:

- emigrate (but is this really practical ?)
- make distributions from discretionary trusts
- pay any bonuses
- pay dividends
- defer expenditure until after 5 April
- delay gift aid donations
- delay pension contributions
- will trade losses be generated and how will they be used
- can borrowing be taken to give tax relievable interest payments

Bits and pieces...

Taxpayers' Charter

A Taxpayer's Charter was legislated for in the 2009 Finance Act and was introduced by HMRC before the start of the year. This sets out the standards of behaviour and values to which HMRC will aspire in their dealings with their 'clients'.

If you think you may be with the grasp of the Chancellor with his new 50% rate then some careful planning is recommended. HMRC anticipated taxpayers trying to mitigate the impact of the new rate, so they brought in measures to counter excessive pension contributions (basically over £20,000), and other deductions which normally reduce taxable income such as losses and qualifying loan interest.

Community Infrastructure Levy

Another 'risk' for those involved with land is the introduction of the Community Infrastructure Levy (CIL). If you look at the name of this you might be lulled into a false sense of the thing. Looking at each word of the name, 'Community' could in a certain light give it a warm, wholesome feel. 'Infrastructure' conjures up images of roads, bridges, sewers even. 'Levy', well this gives it away, it is a tax which is levied on the increase in value of land arising due to development.

There have been seven taxes on this theme in this country. The earliest was introduced shortly after the battle of Agincourt in 1427, when a levy could be imposed on increased land values resulting from flood defence works. In the last century alone there were four taxes of a similar theme introduced, the most recent being the Development Land Tax, with us between 1974 and 1985. None of these taxes have been long lived.

The CIL is designed so that the owner or developer of land funds the cost of infrastructure to support the development of an area.

Important dates for CIL are:

- 6 April 2010 – Regulations enter into force
- 6 April 2012 – CIL can be levied

I have just had a brainwave about the timing of when CIL can be levied from. Most likely all the building work for the Olympics will have been got underway by then so CIL will not deter developers from creating a super Olympic village, stadium, hotels etc. Does anyone know where you can get tickets for this extravaganza? Answers on an e-mail please.

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Enough of this digression. Before CIL can be levied each Council has to decide whether or not to adopt CIL. Councils have to go through a process in order to set the level of CIL, for this they will need to gaze into their crystal balls to assess what developments are likely to occur over the period (expected to be 10 years) for which the CIL will be set. They then need to estimate the required infrastructure to support the developments and the cost of these taking into account any other funding sources they may be in receipt of. From this detailed study, they will set a rate of levy per square metre. This will be some task and Councils may not yet be geared up for it.

In the current economic climate, keeping costs down is a must for developers. Councils will be aware that if they adopt CIL but an adjoining Council does not there is a risk that the developer will seek to site their development where the cost is cheaper. So, Councils may not adopt CIL straight away and as we have an election looming any new government may yet alter or scrap CIL altogether.

One aspect of CIL that sticks in the throat is that once CIL has been paid to the Council that has levied it, there is no legal requirement for the Council to actually spend the cash on community infrastructure.

There are other undesirable aspects of CIL which developers need to be aware of:

- payable within 28 days of commencement of development
- the rate is non negotiable
- councils have no powers to relax rules
- no payment in kind is allowed
- cost of public works undertaken cannot be offset
- S106 agreements may run alongside for a period

Beware, that if payment is not made within the 28 day period, Councils have the powers to halt developments and to recover CIL through the courts.

Fortunately, there is a de minimis size for developments below which there will be no levy. Wait for it, it is just 100 square metres. Basically just enough space for your house extension, swimming pool or folly in the park, but no more. It is an acknowledged outcome of a single fixed rate of levy that there will be developments which will cease to be economic. It seems a bizarre policy to choke off potential economic growth given the delicate economic environment. Where is the joined up government in that? CIL even applies to developments relating to waste and refurbishment of existing properties which other government departments seek to encourage.

So if you are in the position to own development land or develop land then do try to get planning permission as early as possible. If you are entering into any agreement relating to future developments, such as conditional contracts or development agreement factors in the possibility for future CIL. If you want to avoid CIL then you need to time the start of the development carefully.

Bits and pieces...

Sunny Climes

After all the doom and gloom of credit crunch Britain do you fancy re-locating to Europe ? Well, farmland and woodland will now qualify for agricultural property relief from inheritance tax even if it is situated in an EEA country.

your feedback...

We would like to know if there are any particular issues which are important to you and that you feel we should cover. Please do get in touch...

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