



Summer 2010

prime review

helping your business work for you

☉☉☉ Hung out to dry

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 is now set for 22 June 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 a second Finance Act 2010.

We will keep you informed of developments as they unfold but please contact your Relationship Director or the Business Development team on 0845 872 2099 if there are any issues you wish to discuss.

☉☉☉ Litigation team doubles in size to cope with demand

The demand on Prime's dedicated litigation team has continued to grow so much over the last year that the team has now doubled in size to accommodate requests for assistance with complex matrimonial breakdowns, messy tax investigations and company disputes from solicitors across the whole of the UK.

Alf Pare, who heads up the team, said: "When things don't quite add up, it's the team's job to evaluate the circumstances and unravel what's really wrong quickly".

"This can be anything from a straightforward company valuation to comparing and contrasting two sets of accounts where there is a business involved in a divorce case and both sides cannot agree on the financials, to unraveling messy tax affairs of business owners, currently under investigation by HMRC or

where cases of fraud have been identified – we just never know until a case lands on our desks what to expect" continues Alf.

To allow the firm to cope with the increase in work, Ruth Chapman, who joined Prime in September 2009 moves across to work alongside Alf, whilst still retaining a small portfolio of clients of her own, as a general accounting practitioner. Ruth has a great deal of experience of defending clients placed under scrutiny by HMRC looking at their tax affairs, as well as identifying cases of tax fraud, having previously worked for PWC within their national Tax Investigations team.

Both Alf and Ruth are supported by Jane Canavan and Scott Jones, contributing to the administrative and research tasks involved with the job.



L-R - Jane Canavan, Ruth Chapman, Alf Pare, Scott Jones



29 Warwick Road, Coventry, CV1 2ES

DX: 11221 Coventry 1

Tel: 024 7622 0208

Fax: 024 7622 1065

Email: coventry@primeaccountants.co.uk

Marlborough House, Warwick Road,

Solihull, West Midlands, B91 3DA

DX: 714017 Solihull

Tel: 0121 711 2468 Fax: 0121 711 1701

Email: solihull@primeaccountants.co.uk



A clean sweep

Reducing the carbon footprint is both an immediate and longer term issue affecting personal and business investment but what help is there for financing energy saving projects.

The Carbon Trust in its financial year 2008/09 offered over £22 million in Energy-Efficiency loans to replace old equipment and they are interest free.

Financing energy reduction

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

The unsecured loans with no arrangement fee range from £3,000 - £100,000. 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.

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.

Who is eligible?

An organisation, for example, a sole trader, partnership, company, club or charity, needs to have been trading for at least 12 months and generally to qualify as an SME. An SME is defined as:

- 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.

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

Relationships with records

Establishing and maintaining good business relationships without doubt would be considered important for the wellbeing, development and maybe even the survival of a modern business. Record keeping should be approached on a similar basis.

Keeping it under control

A good record keeping system saves time in the long run as up to date records will help you:

- keep track of your expenses
- ask for a bank loan or credit if you need to
- see quickly what you are owed by others and how much you owe them
- save accountancy costs
- pay the correct amount of tax
- receive the correct amount of benefits or tax credits
- avoid paying any extra tax or penalties.

Why you need to keep records

The law says that you should keep all records and documents you need to support the entries on your tax return. If HMRC need to check your return, they may ask to see the records you used to complete it.

Record keeping penalties

If adequate records are not kept or you do not keep your records for the required period of time, you may have to pay a penalty.

Penalties for an inaccurate return

If an inaccurate return is submitted a penalty may be due unless you can show that the mistake was made even though reasonable care was taken.

Some of the ways in which you can show you've taken reasonable care include:

- keeping full and accurate records which are regularly updated and saved securely
- checking with HMRC or an agent or accountant if there is something that you don't understand.

The records you need to keep

The records you need to keep will depend on the size and complexity of your business and the different taxes that you have to pay, collect or charge.

The HMRC website has a very useful help sheet with specific detailed guidance on

records to keep in different situations, for example:

- Self-employed - www.hmrc.gov.uk/sa/rec-keep-self-emp.htm
- VAT - www.hmrc.gov.uk/vat/managing/returns-accounts/accounts.htm

How to keep your records

The law does not say how you must keep your records. You must keep some original paper documents which show that tax has been deducted. An example is form P60 (end of year certificate for PAYE). Generally it is recommended that you keep all original documents you receive.

Most other records can be kept electronically (on a computer or any storage device such as disk, CD, memory stick or microfilm) as long as the method you use:

- captures all the information on the document (front and back) and
- allows the information to be presented in a readable format if HMRC need to see it.

How long to keep records

As a general rule, you should keep your records for a minimum of six years.

You may need to keep records for other reasons, as well as tax purposes. For example, the Companies' Act requires limited companies to keep specific records. Such records may need to be retained for different time limits, so be careful not to destroy any records you also use for tax purposes too soon. If you are at all unsure, please contact your Relationship Director or the Business Development team on 0845 872 2099.



☉☉☉ All in the name of Charity!

Prime directors and staff took to the waters in dragon boats in May to raise money for the Anthony Nolan Trust. 20 teams from across the region battled it out to see who would be crowned champions for 2010! A grand total of £1500 for raised – well done all!

But it's not just those that work for Prime that have got the fundraising bug. Simon Barrett, son of Prime Director, John Barrett recently rose to the challenge of climbing to Everest base camp over £1000 for Cancer Research.



☉☉☉ Neither a lender nor a borrower be

Managing the budget deficit will be high on the economic political agenda with no doubt some consequential impact on taxation matters. Meanwhile in the micro economy, borrowings frequently arise between a company and its 'director shareholders'. This article considers the overall taxation perspective for both lender and borrower beginning with the common situation of where loan advances are made from the company to the individual.

The company perspective

A tax charge arises where a loan advance (or an increase in a loan) made to a director shareholder during the accounting period remains outstanding nine months and one day after the accounting period end. The tax rate is 25% of the amount of the loan which existed at the accounting period end and which is still outstanding at the due date.

If the loan is repaid in full (or in part) in a later accounting period, this tax (or part thereof) will then be repaid nine months and one day after the end of that accounting period. For example, if a loan was repaid on the first day of a 12 month period ending 31 December 2010, the tax relating to that loan would not be due for repayment until 1 October 2011 – nearly two years after the repayment of the loan! If instead the repayment was made on the last day of that same accounting period on 31 December 2010, the tax refund would still be due on 1 October 2011.

What happens if the loan is written off?

From the company's point of view, the loan write off is essentially a bad debt for accounts purposes and is initially treated as an expense in the profit and loss account. But is it deductible for corporation tax? Such a bad debt has never been allowed as a trade deduction for tax purposes, but in recent years some have argued that a claim could be made for it to be relieved as a non trade

debt under company loan relationship rules. There has always been a risk of HMRC challenge associated with this course of action but in any case this 'loophole' was closed by the Chancellor on 24 March 2010 in a Budget announcement now reflected in the Finance Act 2010. Essentially there is no corporate tax deduction for shareholder loan releases or write offs made on or after 24 March 2010.

What tax implications will there be for the director shareholder?

Firstly, if loans generally exceed £5,000 at any time in the tax year and interest is either not charged or is charged at less than the official HMRC rate (currently 4%), a taxable benefit will arise. This is generally calculated on an average basis, using average capital outstanding during the tax year and the average interest rate prevailing. Where there is significant fluctuation in loan balances and/or HMRC interest rates then an actual basis (amounts and rates) may apply instead. Whatever the resulting benefit, this is then charged to income tax at 20%, 40% or 50%, depending on the circumstances of the individual. The company as employer (but not the employee) will have to pay 12.8% national insurance contributions (NIC) on the employment benefit.

There is no taxable benefit if interest is charged at the official rate or for certain qualifying loans. There is also an exemption where non qualifying loans do not exceed £5,000 at any time in the tax year.

And a loan write off?

If a loan is written off, a director shareholder is assessed on the income as dividend income, as opposed to earned income. The total taxable income includes the amount written off grossed up for the 10% dividend tax credit available on all dividends. This is then charged at either 10%, 32.5% or 42.5%, depending on the individual's

circumstances. The associated 10% tax credit, (though non refundable) is available to reduce any tax liability.

Although from a tax view point the income is not assessed as earned income, it is generally considered to be subject to Class 1 employer and employee NIC.

Company as borrower

Of course, it may be that a loan account is not actually overdrawn, and the company actually owes money to the director shareholder. Clients who find themselves in this position can use it to extract money from the company in a tax efficient way.

From the director shareholder's point of view, there is no reason not to charge interest on the amount lent to the company. If the company was borrowing the money from any other source, it certainly would have to pay interest. Commercial interest will generally be tax deductible for the company.

In the hands of the director shareholder, the income will be taxable as savings income, and will usually be taxed at 20%, 40% or 50%, depending on their individual circumstances. Exceptionally where an individual has

less than £2,440 of other income (excluding dividends), some taxable savings income, may only be subject to a rate of 10%. Also, no NIC will be due as this only applies to earned income. This will benefit both employer and employee.





Curiouser and curiouser

Have you installed new 'plant' in a building used for the purposes of your trade recently? 'Plant' includes such items as lifts, central heating, air conditioning and electrical systems. All these items qualify for plant capital allowances.

But a tax allowance is not necessarily limited to the plant. It can include capital expenditure on alterations to an existing building incidental to the installation of plant in a building. For example, the installation of a lift to upgrade an office block will require the construction of a lift shaft. The lift qualifies as plant but the lift shaft does not. However, the shaft qualifies for plant allowances under the 'incidental' rule. In contrast, expenditure on installing a lift shaft when constructing a new building does not qualify as it is not expenditure on alterations to an existing building.

How much expenditure falls into the extended meaning of plant has been considered in a recent tax case. Wetherspoon pubs had submitted significant claims for expenditure incurred on the conversion of all sorts of premises into pubs. Some of the claims were disputed by HMRC. Much of the disputed expenditure related to whether non plant costs can be classed as incidental to the plant and thus qualify as deemed plant.

One example of expenditure where the Tribunal agreed with Wetherspoon was a cement floor. A cold store was created within one pub in order to chill and maintain the temperature of draft beer. Because of anticipated spillages and associated washing down, the floor had to be inclined to a new drainage channel by means of which liquids would be pumped out by pumping equipment within the cold store. Wetherspoon claimed

the cost of the cement flooring as expenditure on an alteration to the existing building which was incidental to the installation of the drain and pumping equipment.

HMRC took the view that some of the expenditure was eligible for allowances, being the proportion which related to the provision of the incline. But they argued that:

- 94.4% of the cost should be disallowed because that represented the proportion which would have been incurred anyway if a level floor had been installed.
- there was a lack of proportion between the provision of the inclined floor and the drain which made it inappropriate to regard the former as incidental to the provision of the latter.

The Tribunal considered that full relief was due. There never was any intention to provide a level floor which was then altered to an inclined floor - it was to be an inclined floor from the start. The fact that the cost of altering the existing building to provide the inclined floor was relatively higher than the cost of the plant to whose installation the alteration was incidental is immaterial.

In order to maximise the claims that can be made for both plant expenditure and incidental costs, it is very helpful to plan the potential capital allowances claim before the work begins on the building. This helps to ensure that purchase orders, invoices and other documentation provide sufficient analysis of the costs involved. Please contact Sarah Nickols on 024 7622 0208 if you are planning to incur capital expenditure on your building.

CIS problems

There have been a series of cases over the last few months regarding decisions by HMRC to refuse to allow taxpayers to be paid gross within the Construction Industry Scheme (CIS).

One particular case illustrates some of the issues. HMRC wrote to the taxpayer, stating that the tax treatment for CIS purposes would change from a gross payment position to payment under deduction of tax with effect from 90 days from the date of the letter unless there was an appeal.

The reason for HMRC's decision was stated as follows:

- the self assessment first payment on account due on 31 January 2007 was not paid in full until April 2007 and
- the contractor's monthly return for 5 May 2007 was outstanding.

The individual stated that he was distracted by personal problems in the nature of serious health problems affecting both himself and his immediate family and then work commitments and that these were the causes of the payment being made late. The taxpayer was 61 years old and argued that the withdrawal of gross payment status was likely to result in his having to close down his business, with no prospect of employment.

The Tribunal held that the taxpayer had both shown a reasonable excuse for his failure and that he had made the payment on account without unreasonable delay after the grounds for the excuse had ceased. The excuse consisted of the inability to make the payment on account without prejudicing his business cash flow and the stress suffered by reason of his health and other personal problems in the nature of family illnesses. However, in many of the other cases taxpayers have not been so lucky and have lost their gross payment certificates.

If you are experiencing any difficulties in meeting your tax obligations, it is far better to talk to HMRC before they talk to you. Please do get in touch with Monima Simpson-Smith, Prime Paysolve on 024 7622 0208 if you have concerns about this issue.



Meet our directors...



Laurence Moore



Kevin Johns



John McDonald



Jamie Steilding



John Osborne



Morgan Davies



John Barrett



Ruth Chapman