

## Hobsons : Newsletter February 2006

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### Introduction

By the time you receive this newsletter we will have passed the deadline for submitting the 2005 self assessment tax returns. As you will have noticed we have been somewhat pre-occupied during January 2006, making sure that clients returns are filed before the end of the month. Now that this major year end filing chore has passed we can "come up for air" and consider other matters!

Don't forget to pay your self-assessment tax on time. Any balance of tax due for 2005, and first instalment for 2006 (if applicable) was due to be settled by the 31 January 2006. We advise that you clear any arrears BEFORE the 28 February 2006 when both interest and a 5% penalty will be added to your dues. (The 5% will only apply to the balance of tax unpaid for the year ending 5 April 2005, though interest on all tax unpaid runs from 1 February 2006)

We now have 2 months before the end of the current tax year (5 April 2006). This is an ideal time to consider tax year end planning to ensure that we take advantage of tax planning opportunities - once the 5 April has passed many of these opportunities are lost! If you require any help please call.

The rest of the newsletter considers the transfer of a limited company to a sole trader or partnership (disincorporation), car mileage claims and VAT receipts, Internet shopping and import duties, penalties under the new CIS rules and increases in tax allowances for plant and equipment purchases.

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### Employment Law update

Recent reforms to discrimination legislation have seen amendments to both sex discrimination and disability discrimination legislation.

In October 2005 the Sex Discrimination Act was amended, with the introduction of specific offences of harassment and pregnancy/maternity discrimination, which had both previously been included in direct sex discrimination. In addition, changes were made to the definition of indirect sex discrimination - the application of "a provision, criterion or practice" that disadvantages a woman or women compared to men and which cannot be shown to be a proportionate means of achieving a legitimate aim.

Disability discrimination legislation was extended in December 2005, with the definition of disability amended to include certain progressive disorders from the moment of diagnosis. Previously, pre-symptomatic conditions, however serious, were not classed as a disability as they did not have "a substantial and long-term effect on day-to-day activities." The amended definition now provides that "a person who has cancer, HIV infection or multiple sclerosis is to be deemed to have a disability?"

In addition, December 2005 saw the introduction of the Civil Partnership Act, which created a new legal relationship for same-sex couples. The Act created new rights for same-sex couples, including equal employment rights with married couples, with civil partners now having the following entitlements:

- ? The same rights as a married person under the Sex Discrimination Act to compare their treatment with that of a single person
- ? The right to claim paternity leave, adoption leave, statutory paternity pay and statutory adoption pay
- ? To right to make a request for flexible working

? Rights under the sexual orientation discrimination rules not to be treated less favourably than a spouse

? The right to any contractual benefits which are available to employees? spouses

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### **Disincorporation - transferring your business from a limited company to a sole trader or partnership.**

This article is not a recommendation that you move your limited company business into an unincorporated, sole tradership or partnership. It is merely a brief summary of some of the tax effects if you do decide to disincorporate.

There are likely to be other issues, some commercial, some tax related that would need to be considered.

Points to be aware of:

Once you have passed a resolution to wind up the company, bringing to an end the current chargeable accounting period, the following matters would need to be taken into account.

1. Corporation tax will be payable nine months after the date of the resolution, as a new accounting period has now started and the company remains liable until it has been fully wound up.
2. VAT registration of the dissolved company can be taken over by its unincorporated successor, but this is generally inadvisable. It may be best to leave the liabilities, both known & unknown, with the old business.
3. Elections can be made to transfer any plant and machinery and industrial buildings to shareholders at tax written down values as long as these elections are made within two years of transfer of trade.  
However this may not always be the best solution. Clients should also value plant and equipment at a realistic market value to see if this produces a better tax result.
4. Trading stock and professional work in progress can be transferred at market value.
5. Care must be taken in the allocation of trading losses, which can only be offset against income of the company before it is dissolved, although in some instances may be offset against trading profits of the preceding 36 months.
6. If possible, assets which may realise a chargeable gain should be sold before disincorporation - if the company has made trading losses in the same accounting period. It is not possible to offset trading losses against these chargeable gains after cessation of trading.
7. Likewise with loans that have been made by the company to its directors - repayment should usually be made before winding up to avoid the loan being treated as a benefit in kind.
8. Distributions of dividends and/or capital must be made at the optimal time, as they will affect capital gains tax, the personal tax positions of shareholders and the value of the company at cessation. Generally speaking distributions to shareholders are treated as income (dividends) prior to winding up, and as capital payments subject to capital gains tax during winding up.
9. If the company has been making profits, the valuation of goodwill requires consideration and may be a barrier to disincorporation as an unattractive tax liability may arise.
10. It is important that winding up is achieved as quickly as possible. The shares in the company will be non-business assets for taper relief purposes during this time - so business asset taper relief otherwise available will be diluted.

As indicated at the beginning of this article there are many other considerations which need to be taken into account when considering the disincorporation of a business. Tax legislators are constantly "moving the goal posts"! However if you would like more information on this topic please give us a call.

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### **Car mileage claims - VAT receipts**

Do you or your employees claim mileage for driving your own cars for business journeys?

Unless you provide your employees with a company fuel card, credit or debit card or a fuel account at a garage, new legislation must be taken into account from the 1st January 2006 if you want to continue recovering VAT input tax on the fuel element.

To reclaim VAT you must have a VAT receipt for the purchase of the fuel. Make sure your employees are aware that they need to ask for a receipt when they buy fuel from now on - these receipts must be appended to their claim forms, otherwise any reclaim of VAT on the fuel element will be disallowed.

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### Internet Shopping and Import Duties

Customs and Excise, or HMRC as they are now known, issued a Press Release recently that is intended to inform Internet shoppers that hidden duties, including import VAT, will be levied on goods valued at more than £18 bought from non-UK based Internet retailers.

These duties are taking buyers by surprise, especially on purchases sent by American companies.

A customs declaration has to be made by the sending company on your parcel, and you will be regarded as the importer of these goods, whether for private use or for onward sale, new or used, bought by you or someone else as a gift for you.

The import duties payable by you will depend on the type of goods that you have purchased. Cash will be demanded when the postman knocks on your door, so be prepared!

Although customs duty is not payable on goods bought within the EU, VAT may be payable with special rules applying to cigarettes, tobacco and alcohol. Personal import allowances of the duty free kind, that operate when travelling outside the EU, do not apply when the goods are supplied by post or courier.

AND, if you are tempted to make a false or misleading customs declaration on your parcel then you risk further financial penalties, criminal prosecution and forfeiture of the goods themselves.

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### Construction Industry - Penalties after 1 April 2007

In advance of the changes to the CIS rules we have noted below a quick summary of the penalties which will be applied, post 1 April 2007, if you don't comply with the new rules.

We will be issuing more information on the amended Construction Industry Scheme prior to implementation on the 1 April 2007.

1. **Late submission of monthly return.** The penalty for this including a failure to submit a nil return (unless otherwise agreed with the Revenue) is £100 per 50 subcontractors or part thereof per month.
2. **Negligent or Fraudulent Submission of an Incorrect Monthly Return.** Penalty here is up to 100% of the under-declared CIS deductions.
3. **Failure to Produce CIS Records.** Where HMRC require the production of CIS records and the contractor fails to do so the penalty is an initial penalty of up to £300 and a daily penalty of up to £60 for a continuing failure.
4. **Failure to Provide Subcontractor with Payment Advice.** The penalty for this easily made error is an initial penalty of up to £300 and a daily penalty of up to £60 for a continuing failure.
5. **Making a False Statement in order to register for Gross Payment.** A penalty of up to £3,000 (can be mitigated).
6. **Making an Incorrect Status Declaration.** This is the big one carrying a penalty of up to £3,000 per month (as it is a monthly failure).

Additionally contractors will be at serious risk of losing their gross payment status, due to a

new review process. Presently contractors will only lose their gross payment status, if they fail to abide by the relevant criteria at a three year review date. Under the new rules this review will be triggered on a "rolling basis".

For instance gross payment status could be taken away if you were just 14 days late in making a monthly payment, or, make 4 late payments however short the duration.

Setting up workable systems to monitor compliance under the new regulations will pay dividends. If you are a contractor and would like to set up a planning meeting with us please do call.

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### **Purchases of plant and equipment for small business - increases in tax allowances**

From April 2006 the initial first year allowance for purchases of qualifying plant and other equipment will increase from 40% to 50%. This applies to expenditure by businesses that qualify as small.

The first year allowance does not apply in a period that a trade is permanently discontinued.

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### **Tax Diary February/March 2006**

**1 February 2006** - Due date for corporation tax for the year ending 30 April 2005.

**19 February 2006** - PAYE and NIC deductions due for month ending 5 February 2006. (If you pay your tax electronically the due date is 22 February 2006)

**28 February 2006** - Last day to pay your balance of self assessed tax for the year ending 5 April 2005. Payment made after this date will be subject to a 5% surcharge on tax outstanding, and interest will apply from 1 February 2006!

**28 February 2006** - Companies House filing deadline for private company accounts year ended 30 April 2005.

**1 March 2006** - Due date for corporation tax for the year ending 31 May 2005.

**19 March 2006** - PAYE and NIC deductions due for month ending 5 March 2006. (If you pay your tax electronically the due date is 22 March 2006)

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