

Tax Angle



Andrew Shaw,
National Tax Managing Partner

A Vote for Certainty

Is Gordon Brown messing it up, or is it Alistair Darling or is it both of them? We delayed issuing our annual Pocket Tax Guide for 2008/09 until now because we were not sure what would eventually get on to the Statute Book. What a good job we did after all the furore over the abolition of the 10p tax rate and the big climb down. If the Government could have handled it worse then I am not sure how; once again it seems that commonsense went out of the window just to try and score political points at the Dispatch Box. Other last minute changes to Capital Gains Tax (Entrepreneurs' Relief), Offshore Trusts for non-domiciled residents and Income Shifting left us not knowing where we are, or where we are going.

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As tax advisers we would like the tax legislation to be simple, fair and certain but it is currently none of these things. The most important of these is certainty and this is the feature that is most of all missing from the current situation. Government should produce legislation that enables the taxpayer to understand their obligations, tax liabilities and plan their affairs so that they can calculate the tax consequences of their actions. Rapid and regular changes to the tax legislation, without consultation with the tax profession or indeed representatives of the taxpayer, deprives the taxpayer of these certainties.

In this situation one of two things happen. Either the taxpayer limits their activities to control potential tax liabilities or the taxpayer departs the UK for foreign climes. Whether it is high net worth individuals or multi-national corporates, relocation has never been easier.

Most EU jurisdictions now offer lower levels of taxation than in the UK and greater degrees of certainty over future tax levels. Many countries, onshore and offshore offer suitable incentives to attract these same taxpayers and whilst Gordon Brown may huff and puff about introducing punitive legislation the impact will be nothing. Taxpayers will still make their choices and if they move to another EU jurisdiction such as Cyprus, then they will be protected by EU tax laws, which will prevent domestic legislation overturning basic tenets of EU Law, such as the freedom to base their tax affairs in any EU State, regardless of nationality.

Double tax treaties also serve to prevent Governments from taxing nationals who are resident in another Country (unless you are an American Citizen). Therefore many people and companies will use either EU Law or double tax treaties to ensure they are taxed outside the UK, even though they may be regular visitors to the UK.

BTG Tax is advising a whole range of businesses and many individuals on structuring their worldwide tax affairs, so as to minimise their global tax exposure. The UK remains an important part of this advice and can still be used to significant advantage but if we have uncertainty in the UK, then clients will choose options that base themselves elsewhere.

Andrew Shaw



Entrepreneurs Beware!

“Relief is relief” for taxpayers whether it is Capital Gains Tax Taper Relief or Entrepreneurs’ Relief (ER). Banking ER, as with any other relief, relies on satisfying the appropriate conditions and in successfully sidestepping the following “elephant traps” which may compromise it.

- **Always Dispose of more than an Asset**
In order to obtain the capital gains tax relief it is crucial to ensure that there is a disposal of “all or part of a business” rather than merely disposal of a business asset, however substantial that asset may be.
The phrase “all or part of a business” will be familiar to those who have lived through the now defunct CGT Retirement Relief... as will the cost of getting it wrong. Several high profile tax cases were fought over this ground during the Retirement Relief regime and there is little doubt that this area will once again become a favourite area of contention again. As always good structuring today may spare tears tomorrow.
- **Renting to your Partnership or Company?**
Under the Taper Relief regime, business property was commonly held outside a trading company and let to it. Not only did the property qualify for taper relief in the right circumstances but also flows of rental income had no adverse implications for claiming the relief. Under ER however, rent charged will now adversely affect or even eliminate the relief potentially available on that property.
The draft legislation suggested that even where rent is waived from April 6 2008, a restriction in the level of Entrepreneurs’ Relief available will still apply as regards rental payments made prior to that date. If allowed to stand, that would have been truly retrospective legislation, given the benign practice under the Taper Relief regime. At the time of writing the Government has

tabled a Finance Bill amendment which serves to rectify matters. Pre April 6 2008 rental receipts from an individual’s personal company will now not compromise ER. Assuming that the amendment becomes law, it is now appropriate for the terms on which personally owned properties are made available to partnerships and companies to be reviewed, particularly given the extremely wide definition of “consideration” for these purposes.

- **Don’t Forget to Claim the Relief!**
Unlike Retirement and Taper Relief both of which were mandatory, Entrepreneurs’ Relief must be claimed by the second January 31 following the year of disposal.
- **Bonds Exchanged for Shares – Another One for the Diary!**
Where shares are exchanged for non-qualifying corporate bonds in the purchasing company, how should the ensuing gain be treated? Although it is typically deferred under the exchange provisions, it is now possible to elect for those deferral provisions to be disregarded to take advantage of Entrepreneurs’ Relief at the time of the exchange itself. A potentially lower rate of tax therefore needs to be balanced against an acceleration of the date of payment. The time limits are identical to those for the standard claim.
- **Trustees need to be cautious**
Where trustees own shares in a trading company, they will need a qualifying beneficiary with an interest in possession in the trust assets to qualify for relief.
In addition the beneficiary will also need to own at least 5% of the company shares in a personal capacity. This has wide ramifications for strategic planning within the context of family businesses with, perhaps, increasing focus on whether or not the next generation is able and willing to buy into the business. Trustees may also wish to consider the most appropriate type of trust to hold shares in the family company in the light of both ER and dividend strategies.

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Now you can Rest In Peace

Anyone who has ever had the pleasure of browsing through the tens of thousands of pages of tax legislation will appreciate that tax law is not always crystal clear. Despite that, taxpayers and their advisers have never had much of a remit to ask HMRC in advance how they will apply the legislation in any given scenario.

Apart from being allowed to ask for “advance clearance” in respect of certain types of transactions or for an interpretation of new legislation, the taxpayer and their advisers have generally had to interpret the law themselves, declare it accordingly and then wait for HMRC to either agree or disagree.

It is, therefore, with some degree of pleasure (the kind of pleasure that only a tax adviser can feel) that we welcome the new extended clearance service for general business tax issues where there is material uncertainty over the interpretation of the law.

We also welcome the extension of this clearance procedure to include the Inheritance Tax (IHT) relief

known as Business Property Relief (BPR) on a trial basis for 6 months from May 1, 2008.

BPR can be extremely valuable, offering up to 100% relief from IHT where qualifying assets are held. However, the BPR legislation is riddled with grey areas and this opportunity (albeit for a limited time at the moment) to clarify those grey areas is appreciated.

The key points of the clearance procedure are as follows:

- There must be a material uncertainty over the interpretation of the law;
- In most cases, it must also relate to a commercially significant issue;
- The application for clearance (with various required details) must be sent to the specialist IHT-BPR Clearance Team or the HMRC Clearance Team (for more general business issues);
- The application must be fairly technical in nature, referring to the legislation in some detail and any supporting case law etc.;

- Except in the most complex cases, HMRC will respond within 28 calendar days.

Given the limited time available to make BPR applications, this is an ideal time to review your IHT position, especially if your estate includes business assets of any nature. If such a review shows up any uncertainties in terms of the availability of BPR, we will be able to put the most beneficial case and interpretation to HMRC on your behalf and we can turn those uncertainties into certainties. Even if the news from HMRC is not what we wanted to hear, at least we can consider taking action in order to improve the situation. Anything to allow you to die happy and rest in peace!

If you wish to discuss your specific circumstances, please contact me on 0121 452 1515.

Julia Rosenbloom - Tax Manager
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P11D Dispensation Update

Shortly after the 2008 Budget, H M Revenue & Customs announced that P11D dispensation notices would be revoked retrospectively where the level of expenses or allowances could not, in the opinion of the tax inspector, be justified, even though full discussion may have taken place in advance of the dispensation originally being granted.

In the past, this measure has been restricted to more serious cases where misleading statements have been made, but we are now acting for a client where reasonable subsistence allowances are being taxed retrospectively. In this case, a lunch allowance of £5 and a dinner allowance of £13.50 had previously been agreed with the local tax office and a dispensation given. The enquiry arose because a subsidiary company (with an identical employee base) asked for the dispensation to be extended to that company but the tax office requested the employees keep receipts showing their average expenditure over a 2 month period before they would do so. As this revealed average expenditure of £3.40 on lunches and £9.20 on dinners, H M Revenue & Customs would only agree to revised allowances in line with the reduced amounts but, more importantly, the parent company is now being pursued for arrears of PAYE and NIC for the difference over a number of years, giving rise to a significant liability.

It is important to remember that a dispensation notice does not absolve an employer from a PAYE liability, it is simply a mechanism to reduce administration.

Many employers have P11D dispensations that were negotiated several years ago and whilst, previously, it could be assumed that payments made in accordance with the notice would not give rise to a tax or NIC liability, this is no longer the case and employers should take steps to review the basis on which the dispensation was originally given and check that the notice accurately represents expenses that are now being paid.

PAYE inspectors are also concentrating on entertaining expenditure where this is included in a dispensation. In particular, they are looking for evidence of staff entertaining which has been incorrectly treated as business entertaining or travel and subsistence. This might include working lunches, away days, personal incidental costs in hotel bills, including drinks, exceeding the £5 per day limit etc. In addition, the inspectors will be looking to ensure that any other costs associated with a business entertainment event, such as taxis or overnight accommodation for guests, have been properly identified and added back for corporation tax purposes.

If you or your client has any concerns that their dispensation or expense policies may not be fully compliant, then please contact me on 0161 837 1870.

John Hill – Director of Employment Taxes
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Welcome to...

Michael Avient joined the London office in May as a Tax Partner. Michael has gained over 17 years experience working for both the Big 4 firms and also boutique firms specialising in tax planning and mitigation. Michael has also worked internationally both in the Far East and Australia.

Prior to joining BTG Tax, Michael was a Partner with a major city accountancy firm where he was Head of Media Tax and Head of London Tax Investigations.

Michael has a number of Media clients dealing with indigenous film production companies, US studios and also business angels.



Michael has also developed a wide knowledge of the tax mitigation industry and has commented from a tax perspective on many of the structures placed into the market. He also specialises in HMRC investigations into such tax mitigation structures and has assisted the promoters of such structures, introducers and also participants. Over the past 5 years Michael has been involved in tax investigations with total tax at risk in excess of £150m.

Michael has written for Taxation, Tax Journal and International Accountant Magazine. He has also been quoted on LexisNexis and in Screen Finance.

Congratulations to...

Paul Malin has been appointed a Director of the firm with effect from April 1, 2008. Paul now heads up our Financial Investigations Group in Birmingham, having joined the firm in April 2005.

Julie Osbaldeston has been promoted to Tax Manager in our Private Client Group, also with effect from April 1.

In our VAT Department in Manchester, Mike Marsden has been promoted to Senior Manager, with effect from July 1, 2008.

Inaugural Staff Day

BTG Tax recently held a staff day at the Birmingham office where tax colleagues from the Manchester, London and Birmingham offices all met up for the first time. After the business of the day, a Dragon Boat Racing competition took place on Edgbaston Reservoir and the winning team are pictured right with their medals. (Left to right) Jeff Kowal (Birmingham), Damian Woodcock (Manchester), Laurence Bard (London), Richard Smethurst (Birmingham), Graham Cliff (Manchester), Laura Rowbottom (Birmingham), Amy Jones (Birmingham) and Neil Byrne (Manchester).



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