

the bottom line

Welcome to the Summer 2011 edition of the bottom line, our accountancy and tax newsletter. This issue deals with AIA and Capital Allowance planning, maximisation of tax relief on pension contributions, The Bribery Act 2010, evidence for overseas VAT invoices and HMRC investigations into SMEs.

Annual Investment Allowance and Capital Allowance planning

Proposed changes to capital allowances rates from April 2012 were announced in June 2010. These changes are effective from 1 April 2012 in respect of businesses subject to corporation tax and from 6 April 2012 for income tax.

The rate of writing down allowances for the main plant and machinery pool is reducing from 20% to 18% and for the special rate pool for integral features, cars purchased after 31 March 2009 emitting more than 160g/km CO₂ and long life assets, from 10% to 8%. A hybrid rate must be calculated and used where the chargeable period spans 1 or 6 April 2012, calculated on a time apportionment basis.

The annual investment allowance that was introduced in April 2008 for the first £50,000 of expenditure incurred each year on most types of plant, which was then increased to £100,000 from 1 April 2010 (or 6 April 2010), is to be reduced to £25,000 for expenditure incurred on or after 1 April 2012 (or 6 April 2012). Again, where a period spans 1 or 6 April 2012 there is a transitional calculation. However for AIAs this would be in 2 parts; the AIA entitlement, based on the previous £100k annual cap for the portion of the year falling before the relevant operative date and the AIA entitlement, based on the new £25k annual cap for the portion of the year falling after the relevant operative date. The split periods dictate the AIA entitlement in each period and hence limit the purchases in that period.

There are special problems where businesses are required to share a single AIA (eg companies in the same 51% group) particularly if they have different year ends. Broadly, the rule is that the maximum AIA which a company can claim is reduced by any amounts allocated to other group companies with the same or later accounting dates.

From April 2011 it was possible to make an election for an asset to be treated as a short life asset if it is expected to be scrapped or sold within an eight year cut off period. This will allow the asset to be kept in a separate pool and hence balancing allowances being calculated if it is sold or scrapped in the 8 years. If it is not sold or scrapped in the 8 years, it is then transferred back into the general pool.

The above rules and changes to rates give scope for planning:

- Ensuring that purchases are appropriately timed so that they fall within the higher rates of AIA and WDA;
- Deferring purchases if AIA has already been utilised in full;
- If the annual spend has exceeded the AIA applicable, short life assets should be defined first before the AIA is applied, so as to obtain balancing allowances on disposal.

Pension contributions – maximisation of tax relief

There have been many changes to the tax relief available on pensions in recent years with the latest being effective from 6 April 2011. The two recent key changes are a reduction in the lifetime allowance to £1.5m from April 2012 and an annual cap of £50,000 on pension contributions from 6 April 2011. These apparently simple changes actually hide some extremely complex rules which affect the timing of contributions and transitional provisions.

It is important to understand that the £50,000 limit does not set a cap in a tax year but in a "pension input period" or PIP. PIPs were introduced from 6 April 2006 but are only relevant if total contributions exceed the annual allowance and hence with the significant reduction from £225,000 to £50,000 need to be considered. Schemes which existed from 6 April 2006 will have default PIPs beginning on 7 April and ending on 6 April. Such

schemes will fall within the transitional rules unless the schemes have nominated a different end date. It is possible to make a retrospective nomination before Royal Assent to change the PIP end date to before 6 April 2011 so that the old rules apply and the previous maximum annual limit of £225,000 applied without triggering an annual allowance charge.

Tax relief is available on the £50,000 contribution at an individual's highest tax rate, which for 2011/12 may be 50%. If contributions were not paid in the three tax years from 2008/09 to 2010/11 any unused surplus from these previous years can be brought forward and relief obtained in the current year. So potentially, someone could obtain tax relief at 50% on contributions of £200,000 during 2011/12 if they have not paid any pension contributions during that period. In fact, if an individual earns between £100k and £112,950, due to the way the personal allowance is clawed back, the marginal tax rate is 60% and hence contributions at this level are even more beneficial.

The Bribery Act 2010

The Bribery Act 2010 came into force from 1 July 2011. The Act creates four main offences:

1. Making bribes;
2. Receiving bribes;
3. Bribing a foreign public official;
4. The failure of a commercial organisation to prevent bribery by an "associated person" for its benefit.

Bribery is "a financial or other advantage" offered, promised or given with the intention of inducing a person to perform a relevant function or



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activity improperly or to reward them for doing so. The intention is not to criminalise bona fide, proportionate and reasonable hospitality and other business expenditure aimed at better public relations. Associated persons are defined to include all employees, consultants, agency workers, franchisees, suppliers and volunteers of a business. Employers are therefore responsible for the actions of a large number of individuals, some of whom they may have minimal control over.

The Act not only applies to any offence committed in the UK, but also to offences committed outside the UK by a person who has a close connection with the country, such as British citizens, bodies incorporated in the UK or those which conduct part of their business within the UK.

Businesses that can show that they had "adequate procedures" in place to prevent bribery have a defence. Guidance produced by the Ministry of Justice recommends 6 principles that should be adhered to:

1. Clear anti-corruption and anti-bribery policies should be in place that are communicated to all who fall within the definition of "associated person". Policies on gifts and hospitality should be reviewed to ensure they address any bribery risks. Organisations should consider upper limits on gifts or hospitality and procedures should be introduced to fully document and gifts or hospitality received or given.
2. Senior members of the business need to be openly committed to preventing bribery and again this should be communicated within the organisation.
3. Employers should carry out a risk assessment considering the nature of their business and the countries in which they operate. They should also consider remuneration packages where commission targets may indirectly encourage individuals to overlook bribery.
4. Businesses should make reasonable investigations into suppliers, agents, staff, joint venture partners etc. to ensure that they know who they are dealing with.
5. Anti-bribery policies should be fully communicated both internally and externally, training should be provided as appropriate, processes should be monitored and penalties should be considered for breach of procedures. Employers should make it clear that a breach of anti-corruption and anti-bribery policy may lead to gross misconduct. Anti-corruption and anti-bribery training should be incorporated into induction programmes.
6. Organisations should appoint someone

responsible for monitoring and reviewing anti-bribery policies and procedures. Reviews should be carried out periodically as appropriate for the business.

Individuals who commit an offence or senior officers who consent to or connive with those individuals face up to ten years' imprisonment. Commercial organisations can be fined an unlimited amount and prevented indefinitely from tendering for public contracts. Directors can also be disqualified for up to 15 years.

Evidence needed for VAT purposes with overseas customers

It is important for VAT purposes to ensure that the information obtained from overseas customers is sufficient to ensure that a business complies with VAT legislation and does not open itself up to a potential challenge from HMRC.

Sale of services to an overseas customer – Fees charged to an overseas customer are outside the scope of UK VAT provided a business acquires and retains proof that the customer is in business. The best evidence of business status is the customer's VAT registration number in the overseas country. However, it is necessary to check that the number is genuine. Each EU country has a different format for their registration numbers. It is possible to check the format of the number by looking in the HMRC Notice 725 "The single market". A way of checking the actual validity of a specific VAT number is to check on http://ec.europa.eu/taxation_customs/vies. The site will give the name and address of the business to which the VAT number relates. It is possible to print out a validation record of the date and time the enquiry was made and confirmed. Unfortunately, a one off check when you start doing business with a customer is not considered sufficient. HMRC recommend that validation checks are carried out regularly to ensure that the details are still valid and the number has not been deregistered. Alternatively you can contact the VAT helpline on 0845 010 9000 to validate your customer's VAT registration number and name and address.

Export evidence for sale of goods – The export of goods outside the EU or to a VAT registered customer in another EU country where the goods leave the UK is zero rated providing the customer retains proof of shipment to prove to HMRC that the goods have left the UK. Export proof must be retained for six years. If the customer intends to ship the goods

themselves they have three months to provide evidence of export to the supplier. Evidence of transport documents alone will not be sufficient. Information held must identify the date and route of the movement of goods and the mode of transport involved. HMRC recommends that a business takes a "VAT deposit" from the customer, to be refunded when the customer provides acceptable proof of shipment.

Services for non-business customers

– Generally the sale of a service to an overseas customer who is not in business will be subject to the same VAT charge as if the service was provided to a UK-based customer, i.e. it will be standard rated in most cases. However there are a range of services that avoid a charge to UK VAT to a non-business customer based abroad if the customer is resident outside the EU. In such cases, the supply is deemed to be made where the customer is resident, so the UK supplier should obtain details of the customer's address and retain it as part of his or her records. It is recommended that if large amounts of VAT are involved evidence of address is also obtained.

The good news is that two ECJ cases have confirmed that as long as a supplier has acted in good faith and had no involvement in tax evasion and has taken every reasonable step to ensure tax evasion was not an issue then the supplier should not be held responsible for the VAT on these goods if the evidence relied upon subsequently proves to be false.

Record checks targeted at SMEs

In the second half of 2011, HMRC are commencing a campaign to carry out more robust checks on SMEs, as it is concerned about poor record keeping of around 40% of small businesses. They consider that poor business records result in a loss of tax in around 2 million SME businesses annually. SMEs are defined as businesses with turnover of less than £50m and less than 250 employees.

HMRC intend to select around 50,000 businesses annually. They will review the adequacy and accuracy of accounting records and will use existing legislation regarding record-keeping requirements and penalties for failure to comply, with sanctions imposed for significant failures.

HMRC hope to raise £600 million over the first 4 years of the campaign. Selection for investigation will be risk assessed with specific targeting of industries where problems have arisen in the past. Cash businesses are significantly more likely to be targeted.

Contacts:

For further information about the issues raised in this newsletter or if you would like to find out about the range of services that we can offer, please contact Stephen Dabby, Morisha Christy, Tony Sian, Nick Nicolaou, Alex Green or Paul Bradley.