



## ARCTIC RULING PROMPTS TAX LAW CHANGE

Hot on the heels of the House of Lords' decision in favour of the taxpayer in the Arctic Systems Ltd case came a statement from HM Revenue & Customs (HMRC) that the law will be changed on 'the tax treatment of income splitting'. In the Pre-Budget Report, the government announced that it would consult shortly on legislation to remove the tax advantage from shifting income to a person subject to a lower tax rate. It will take effect from 2008/09.

HMRC views it as 'unfair' that a person can reduce their tax liability on business earnings by paying dividends to a non-working spouse or civil partner – the issue at stake in the Arctic Systems case.

The changes will not affect any income arising in 2007/08 or earlier. HMRC is now reviewing all cases kept open while awaiting the House of Lords' decision, and will settle them in accordance with the ruling. However, HMRC has pointed out that not all arrangements are exactly the same as in the Arctic Systems case, and has therefore promised to publish detailed guidance well before the 31 January 2008 deadline for the submission of 2006/07 tax returns. The guidance should also help in deciding on dividends to be paid in 2007/08.

The House of Lords rejected HMRC's argument that Mr Jones, the company director in

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## Salt of the Sea

This autumn will see a new Cornish business commence production of sea salt harvested directly from the ocean at a new purpose built facility, the first of its kind in the UK.

Construction work at Porthkerris on the Lizard Peninsula is nearing completion and follows a six-figure investment that will create up to 15 jobs. The new business, Cornish Sea Salt Company will be producing a flaky, white culinary sea salt that will be hand harvested from the clear waters of Cornwall and is a healthier and tastier alternative to traditional table salt.

The project got the go-ahead following a financial deal with Finance Cornwall, The YFM Group managed South West Ventures fund, Bank of Scotland and The South West Investment Group.

Tony Fraser, a natural resources specialist and managing director of Cornish Sea Salt Company, has worked on the project for three years, with the aim of establishing the first ever sea salt facility in the UK to harvest directly from the ocean.

*"Cornish Sea Salt Co will be providing employment for up to 15 local people and will utilise sustainable, energy efficient and environmentally sound methods. We have tremendous support from the local community and we want to be a business that they can be proud of".* Tony Fraser

Lang Bennetts are delighted to be involved and part of this new and exciting venture that will have a positive impact on the local economy by creating a premium brand and jobs. We look forward to working closely with Cornish Sea Salt and helping it realise its goals.

*"This project could not have gone ahead without the involvement of a wide variety of professional support, the provision of accurate and timely financial information by Lang Bennetts proved key to sealing the deal with our investors. Since then, they have proactively managed our financial affairs, including dealing with grant and loan claims".* Tony Fraser

Through its involvement with Hayle based business, IT West, Cornish Sea Salt Company will become one of the first users in the region of the multi award winning Mamut Business Software, which combines business accounting, CRM and E-Commerce solutions.

For more information on Cornish Sea Salt and its backers, Finance Cornwall, South West Ventures and South West Investment Group, please refer to our website.

## Exam Successes

In the recent round of professional exams, Lang Bennetts trainee Certified Accountants scored a clean sweep, passing all their intermediate stage exams. Congratulations to Becky Thomas, Elaine Hammonds, James Shepherd and Michelle Dash.

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## Have you registered?

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*"Just a quick note to say that your monthly updates and budget update are the best that I receive".*



## Landlords absorb interest rate losses

Rising mortgage interest rates have left some buy-to-let investors facing a loss on their lettings. Owners of let property are taxable on their rental income, but can deduct from this the expenses connected with the letting. For most landlords, the biggest expense is the interest on the money borrowed to buy the property. Therefore, rises in interest rates, which generally cannot immediately be passed on to the tenant in increased rent, have a large effect on a landlord's net income.

Unfortunately, you cannot normally set a loss on property letting against other types of income. You can generally only carry forward such a loss and set it against future letting profits. You need to tell HM Revenue & Customs about the loss within five years and ten months of the tax year in which it occurred, normally by claiming it in your tax return.

There is, however, one special type of loss that you are allowed to set against other income of the tax year in which the loss occurred. Certain residential property in the UK on very short lets may qualify as a furnished holiday letting. The main conditions are that the property must be let commercially for periods not exceeding 31 days for at least 70 days a year and be available for letting for at least 140 days in that year.

Other expenses that owners can deduct from rent include the costs of repairing and maintaining the property, insurance, rent collection and providing services. There is also a landlord's energy-saving allowance of up to £1,500 per residential property for expenditure on certain types of insulation. A renewals allowance (which is basically 10% of the rental income) can be claimed if the property is furnished. For furnished holiday lettings, you can claim capital allowances on the cost of furniture and fittings.

One cost that you cannot deduct is the capital repayment element of a mortgage. Most buy-to-let mortgages are interest-only, so the whole monthly payment is tax deductible. However, some people, such as those who let a property in which they previously lived, may pay a mixture of interest and capital repayment. If you have this type of mortgage, you need to check the annual statement from your lender to determine how much of your payment can be deducted.

The taxation of property is a complex area and there are many aspects, including some tax reliefs, that are not mentioned here. We shall be happy to advise you further.

## ELECTRONIC FILING FOR PENSION SCHEMES

Registered pension schemes will have to file a number of forms electronically from 16 October 2007. These forms include applications to register a pension scheme, event reports and pension scheme returns, though not as yet the self-assessment return for pension schemes.

Scheme administrators must register with HM Revenue & Customs (HMRC) to use the online service for pension schemes before they can file forms. Alternatively, they can authorise a professional adviser to submit the forms on their behalf. Forms can then be filed using HMRC software or commercial software, which is recommended for larger amounts of data.

Pension scheme returns are normally required from occupational schemes with 50 or fewer members and from self invested personal pensions (SIPPs). The 2006/07 return must be filed by 31 January 2008. Larger occupational schemes normally have to file audited accounts instead. An event report covers changes in the pension scheme or its membership numbers and movements of scheme funds during a tax year, and must be filed by 31 January following the end of the tax year. However, you do not need to file a report if there have been no reportable events.

If you would like further advice on this or any other aspect of pension scheme administration, please get in touch.



## HMRC ATTACKS FAKE NON-DOMICILED STATUS

The favourable tax rules that apply to people able to claim UK non-domicile status have long caused controversy, and a government review of the rules that started in 2002 remains 'ongoing'. The number of people claiming not to regard the UK as their permanent home has increased significantly since 2002. Most recently, new claims of non-domiciled status are being made as a response to HM Revenue & Customs' (HMRC) clampdown on tax evasion on offshore accounts.

Amid some suspicion that the rules are being abused, HMRC has added some new questions to individuals' tax returns. Anyone who claims non-domicile status must now state specifically whether their domicile affects their income or capital gains tax liability. There are further questions designed to identify long-term UK residents, and people born in the UK but claiming non-domicile status based on their father's origin. Anyone who previously had UK domicile status must give the date their domicile changed.

Based on the information, HMRC will no doubt open enquiries. But it is notoriously difficult to prove that someone with a non-UK domicile of origin – normally the father's domicile when that person was born – intends to remain indefinitely in the UK, especially if the individual enjoys good professional advice.

## Commercially let property and taper relief

The abolition of capital gains tax taper relief, announced in the Pre-Budget Report, removes an important investment advantage of commercial property over residential property. The imposition of a flat 18% capital gains tax rate from 6 April 2008 will substantially increase tax on sales of commercial property for almost all noncorporate investors.

The change will prompt some investors to try to sell up before 6 April to minimise tax. But you should consider the commercial aspects of your present investment and any alternatives before you rush into a sale. Alternatively you may be able to realise your gains to date by transferring the property to a company you control or some other entity, but there are drawbacks to such a strategy.

Up to 5 April 2008, if you let commercial property, you may be able to pay capital gains tax at a rate of just 10% or less when you sell it – as long as the property qualifies as a business asset for capital gains tax taper relief purposes. There are several qualifying conditions of which you should be aware.

Capital gains tax effectively has a two-tier structure at present, which means that gains on business assets are treated far more favourably than gains on other assets. If you sell a business asset, taper relief reduces your chargeable gain by 50% if you have held the asset for at least one year, and by 75% if you have owned it for more than two years – and that is before deducting your £9,200 annual exemption. On nonbusiness assets, taper relief is also given, but it is much less generous and only reduces the chargeable gain by 5% after three years of ownership, and then by another 5% for each further year up to a maximum 40% relief after ten years. So for nonbusiness assets



that qualify for maximum taper relief, the effective maximum rate of tax on the gain is 24% (60% of the gain at a tax rate of 40%).

Whether a commercially let property is a business asset or not depends on the tenant. The property will qualify if the tenant is a sole trader, a trading partnership or an unlisted trading company. Companies listed on the stock exchange and most other tenants do not qualify.

That is the easy bit. The complication is that the taper relief rules have changed since the relief was introduced on 6 April 1998. For the first two years, a property could not qualify as a business asset if the owner let it to an unconnected business. From 6 April 2000, letting to any unlisted trading company qualified, but only from 6 April 2004 did the present rules come into effect.

To calculate taper relief you have to look at the use of the property in the period of ownership since 6 April 1998. Where the business status of the property has changed during that period, or if different parts of the property have different status, it is necessary to calculate taper relief separately for the business part and for the nonbusiness part.

We can carry out these calculations for you and compare the potential tax liabilities on a sale up to 5 April 2008 and thereafter, as well as advise you on what else you should take into account in deciding whether to keep or sell your investment.



the old and new systems.

LPAs come in two forms. The first, which is entirely new, covers decisions about health, welfare and housing. The second deals with property and money, and is similar to an EPA. The donor can appoint one or more different attorneys for these purposes, and can also specify any restrictions or requirements.

Another new feature is that an LPA is only valid once it is registered with the Public Guardianship Office. Registration will require a signed certificate from a reputable person. This confirms that the donor understood the purpose and scope of the LPA and that there was no fraud or pressure on the donor, who must therefore be mentally capable when making an LPA.

In addition, the donor must nominate at least one person, other than the provider of the certificate, whom the Public Guardianship Office will notify when the LPA is registered, or a second certificate must be provided, which should be signed by a different reputable person. The need for two people

A new legal regime came into effect on 1 October which is intended to give greater protection to elderly people than the enduring power of attorney (EPA) that it replaces. Like an EPA, a lasting power of attorney (LPA)

allows a person – the donor – to appoint a relative, friend or anyone else they trust to manage their affairs should they become incapable of doing so themselves. However, there are many significant differences between

to be involved, apart from the attorney, is intended to be an added safeguard for the donor.

Once it has been registered, an LPA starts to operate when the donor loses mental capacity. However, a donor can also grant an LPA over their financial affairs (but not their personal welfare) that takes effect while the donor still has capacity.

Clearly the right choice of attorney is important and it is often best to appoint joint attorneys. Although any attorney must by law act in the interests of the donor, not everyone is equally up to the task. The ideal time to prepare LPAs is in conjunction with writing or reviewing your will. And they are not just for older people – even a young person might suffer a serious injury.

The new LPA regime covers England and Wales. Similar powers have existed in Scotland since 2 April 2001 in the form of the continuing power of attorney and the welfare power of attorney. Northern Ireland retains the EPA regime.

## Time runs out for trustees' IHT advantage

Trustees of accumulation and maintenance (A&M) trusts have only a few months left to make any changes to their terms which may be necessary to avoid incurring inheritance tax (IHT) on the trust's assets. From 6 April 2008, an A&M trust created before 22 March 2006 will be liable to IHT on assets leaving the trust and the ten-yearly periodic charge on assets remaining in the trust, unless its terms provide that the assets will go to a beneficiary absolutely at age 18.

If you baulk at giving absolute ownership of valuable assets to an 18-year-old, there is a halfway house. If the trust assets will pass absolutely to a beneficiary between the ages of 18 and 25, there will be an exit charge, but it will be based only on the period after the beneficiary's 18th birthday. The calculation is complicated, but the maximum possible charge is 4.2% of the value of the assets, and it will generally be much less than this or possibly even nil.

Trusts under which beneficiaries up to age 25 receive only a life interest in assets will move to the new IHT regime from 6 April 2008. As with most trusts created from 22 March 2006 onwards, the trustees will be liable to the ten-yearly periodic charge. The maximum tax rate is 6% but it will normally be lower. Where the value of the trust assets is less than the inheritance tax nil-rate band, currently £300,000, the periodic charge may be nil. There will also be exit charges on property leaving the trust.

Trustees should consider their circumstances well ahead of the 5 April 2008 deadline, as any changes to the trust deed must be made by that date, and the process can take some time. The first step is to determine how much tax the trust might have to pay under the new regime. You then have to consider whether avoiding that tax is worth what could be a risky transfer of absolute ownership to a beneficiary aged between 18 and 25. We can advise you on all the factors that you should consider.

## Tax calendar 2007/08

### October 2007

- 31** Accounts filing deadline at Companies House for private companies with year ended 31/12/06. Companies submit corporation tax self-assessment returns to HMRC for accounting periods ended 31/10/06.

### November 2007

- 2** Last day for employer to notify car changes in quarter to 5/10/07 – P46(Car).
- 19** PAYE/NIC and CIS deductions due for month to 5/11/07.
- 22** PAYE/NIC and CIS electronic payments due for month to 5/11/07.
- 30** Accounts filing deadline at Companies House for private companies with year ended 31/1/07. Companies submit corporation tax self-assessment returns to HMRC for accounting periods ended 30/11/06.

### December 2007

- 15** Money laundering regulations 2007 take effect.
- 19** PAYE/NIC and CIS deductions due for month to 5/12/07.
- 21** PAYE/NIC and CIS electronic payments due for month to 5/12/07.
- 28** Accounts filing deadline at Companies House for private companies with year ended 28/2/07.
- 30** Last date to file the 2007 tax return electronically to have 2006/07 tax due of less than £2,000 collected through the 2008/09 PAYE code.
- 31** Last day for non-EC traders to reclaim recoverable UK VAT suffered in the year to 30/6/07. Companies submit corporation tax self-assessment returns to HMRC for accounting periods ended 31/12/06.

### January 2008

- 14** Due date for CT61 return and tax payment for the quarter to 31/12/07.
- 19** PAYE/NIC and CIS deductions due for month to 5/1/08 and quarter 3 2007/08 for small employers and contractors.
- 22** PAYE/NIC and CIS electronic payments due for month/quarter to 5/1/08.
- 31** Deadline for submitting 2007 self-assessment return (up to £100 penalty if late). Balance of 2006/07 income tax and capital gains tax due, plus first payment on account for 2007/08 (interest charged on late payments). Accounts filing deadlines at Companies House for private companies with year ended 31/3/07. Companies submit corporation tax self-assessment returns to HMRC for accounting periods ended 31/1/07.

### February 2008

- 2** Last day for employer to notify car changes in quarter to 5/1/08 - P46(Car).
- 19** PAYE/NIC and CIS deductions due for month to 5/2/08.

## SURVIVING A DISASTER

Businesses are far more likely to suffer from extreme weather, such as flooding, rather than fire, according to recent research published by the Chartered Management Institute. The most common causes of business disruption are the loss of computers/IT and key staff.

The fact that firms usually place more emphasis on planning to survive a fire than a flood suggests that many businesses and other organisations need to revise their priorities, especially with the onset of global climate change, which has been brought into sharp focus by this summer's flooding.

Some firms are particularly vulnerable to potential losses from flooding and other natural disasters depending on their geographical location and type of business. But there are many other risks that affect the security of all kinds of organisations. It makes sense to review all the possible threats to continuity, from the integrity of the supply chain to a prolonged loss of power or water. Whether a business survives an unplanned event will depend on the quality of its forward planning.

Research from the British Chambers of Commerce suggests that 80% of businesses without a plan fold in the aftermath of a disaster. A report on climate change commissioned by AXA last year indicated that 90% of small businesses are under-insured – with one in three without business interruption cover to pay their wages and other costs.

The evidence clearly shows that the key to survival, once disaster strikes, is a



business continuity plan that is regularly updated and rehearsed. It is essential to keep a copy of the plan away from the site.

The plan should be simple but focused, with the business risks clearly prioritised and analysed according to their likelihood and potential impact. A typical business continuity plan includes:

- A planned sequence of actions to keep operations going and to recover fully.
- An outline of the role of individual managers and employees for each scenario.
- Details of the off-site IT data back-up and recovery services.
- A list of the key contacts including insurers and utility providers.

Businesses can plan to reduce the risks, but insurance is still important as the 'long-stop'. Business interruption insurance can help a business recoup financial losses from having to cease operations unexpectedly for a few weeks or months.

Key person insurance can protect against the financial consequences of losing key members of staff as a result of death or serious illness. If it is worth insuring assets like buildings, stock and equipment, it is worth insuring the most important assets of the business – the key people.

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the case, was taxable on dividends paid to his non-working wife. Nevertheless, they considered – in contrast to the Appeal Court – that the incorporation of Arctic Systems Ltd was a 'settlement' within the anti-avoidance rules, because its purpose was to share income and therefore reduce tax.

However, Mr Jones could not be taxed on dividends paid to his wife because of the exemption for an outright gift of property between spouses. The House of Lords then

rejected HMRC's argument that the ordinary share held by Mrs Jones was only a right to income – and therefore outside the exemption – because the share also conferred voting and other rights.

Some commentators have suggested that the exemption might be lost if dividends are paid into a joint bank account, because the donor's access to the income would mean there had not been an outright gift. Holding separate bank accounts is therefore a sensible precaution.

## Payroll Solutions

- We offer an affordable payroll service for businesses of all sizes. If you are struggling with PAYE records, confused by complex legislation and just want a cost effective alternative for running your payroll, call Karen Rowland on 01872 272100.
- Karen Rowland can also provide assistance with the New Construction Industry Scheme, including on-line verification of deduction status, monthly returns, production of contractor statements, and employment status advice.