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CHARTERED ACCOUNTANTS
REGISTERED AUDITORS

NEW EMPLOYMENT LAW CHANGES

Proof that employers of all sizes have to keep up with constant changes in employment law came on 6 April 2005 when several changes, covering employee consultation, unfair dismissal and employees on adoption or paternity leave, came into effect.

Staff in organisations with at least 150 employees now have the right to be informed and consulted about issues in their workplace, if at least 10% of employees ask for this in writing. The provision will be extended to employers with 100 or more employees from 6 April 2007 and to those with at least 50 employees from 6 April 2008.

An employer should reach an information and consultation agreement with employees, setting out the arrangements for the process. If it proves impossible to agree, there are standard provisions that can be used. These should cover information and consultation on the organisation's activities, economic situation, employment issues and focus on decisions likely to lead to changes in the

organisation, particularly where jobs might be threatened or there could be a change to the employees' contracts. An Employment Appeal Tribunal can impose a fine of up to £75,000 for failure to comply.

It is now unfair for any employer to dismiss an employee who has been summoned for jury service or who has requested flexible working. Employees can ask for flexible working after 26 weeks' service. All employees, whatever the size of the employer, now have increased protection from dismissal if they take part in industrial action that has been lawfully organised by their trade union.

Employers must also now make full employer's pension contributions to occupational pension schemes for employees on paid paternity or adoption leave. The change brings the treatment into line with maternity leave. In contrast, employees only have to make contributions based on the amount of paternity or adoption pay they receive.

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NEW RULES FOR OFFSHORE ACCOUNTS



Savings directive – an EU initiative

If you have bonds or an interest-bearing bank account in another EU state or associated country, you should be aware of the new rules. EU states will have to pass on information about income paid to foreign investors under the EU savings directive that is to be implemented this July. However, Austria, Belgium and Luxembourg objected to what they saw as an infringement of individual privacy. As a result, they will offer investors a choice between having their details disclosed or instead suffering a withholding tax deduction

from their savings income. The withholding tax rate will initially be 15%, rising to 20% in 2008 and eventually to 35%.

Switzerland and the Channel Islands, which are not EU members, have also agreed to operate a withholding tax deduction for customers who want to retain secrecy, perhaps to prevent spouses or business partners from knowing about their assets and income.

Those affected will receive a receipt for the tax deducted. They must still declare the income on their tax return and pay any further tax owed, so if you are affected by this, you must continue to tell us about all overseas income. HM Revenue & Customs can charge penalties and interest if people fail to declare overseas income. Where taxpayers already declare all their overseas savings income in accordance with the law, the new directive will have little impact.

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- *Tax Threat Looms Over Small Family Companies*
- *Don't Throw Away Your Company Identity*

Taxation

NON-DOMICILE TAX LOOPHOLE BLOCKED



The Budget contained a proposal to block an easy means by which individuals who are resident but not domiciled in the UK could avoid capital gains tax on UK company shares. From 16 March 2005, bearer shares of companies incorporated in the UK will be treated as situated in the UK instead of the country where the bearer instrument is held. Under the old rule the location of the instrument outside the UK kept them out of the capital gains tax net for non-domiciled individuals.

The proposal was not included in the Finance Act, but is likely to be included in later legislation, probably with the same starting date as announced in the Budget.

The main surprise is that the change took so long to come. The government has been looking at the residence and domicile rules generally but, three years after the review was announced, all that appeared in this year's Budget was a statement inviting further contributions to the debate with a view to publishing a second consultation paper.

COMPANY CAR TAX CONCESSIONS

Two small concessions to company car drivers were announced in the Budget. After many years of increasing the tax on such cars, the lower emissions threshold used in calculating company car benefit is being frozen at its 2005/06 level of 140 g/km until 5 April 2008. For company car fuel, the figure for calculating the benefit tax charge will remain at £14,400 for 2005/06.

PRE-OWNED ASSETS TAX IMPACT ON BUSINESS LIFE COVER

Pre-owned assets tax came into effect on 6 April this year, and has already had an impact in several unexpected areas, including some life assurance arrangements to help preserve business continuity if a business owner dies or falls seriously ill.

A tax charge could arise if the business owner who has taken out the policy is also included as a possible beneficiary. The tax charge is intended to penalise people who have given away assets such as their home and then continued to enjoy the use of them, but the rules are very widely worded.

Individuals can avoid the income tax charge by accepting that the asset instead be subject to inheritance tax on death. You can do this by completing the new form IHT 500.

The election must be made by 31 January following the end of the first tax year in which income tax arises. For 2005/06, the

election must therefore be made by 31 January 2007.

HM Revenue & Customs has clarified aspects of the income tax charge. Land and chattels subject to income tax will be valued every five years. The government has announced an exemption for equity release schemes that will be extended to disposals of a part interest in property to family members. The conditions are that the transaction was on arm's length terms and either occurred before 7 March 2005 or is made later but for consideration other than money or readily realisable assets.

It may not suit everyone to opt out of the income tax charge on pre-owned assets, and there are several factors to consider. In some cases, it may even be preferable to suffer some income tax in order to achieve a significant inheritance tax saving. But it is a difficult decision, and you will certainly need advice if you are affected.

INCOME TAX THREAT TO OWNERS OF FRENCH PROPERTY



HM Revenue & Customs is considering taxing owners of property in France on the benefit of their use of the property where they own it through a French SCI.

The SCI – *société civile immobilière* – is a commonly used means by which non-French nationals own French property, because it avoids the strict French succession rules that would apply on the owner's death. It is also possible to structure a SCI using debt to mitigate French wealth tax. There is no equivalent in UK law to a SCI and it does not provide any UK income tax advantages.

Until now HM Revenue & Customs has treated a SCI like a partnership, but suggestions have been made that they should be deemed equivalent to companies. This would result in the owner of the SCI being liable to tax under the benefit rules in respect of personal use of the property.

HM Revenue & Customs already applies the benefit rules to individuals who own overseas property through a company. As with a SCI, the reason for using a company is generally to avoid the impact of various local provisions.

TAX THREAT LOOMS OVER SMALL FAMILY COMPANIES

Owners of small family companies may have to pay thousands of pounds more in income tax after the High Court ruled in favour of HM Revenue & Customs in the key test case involving Arctic Systems.

There has been much anxiety about the impact of the ruling, with some accountants predicting that up to 200,000 businesses could be affected. But the judge in the case said that fears surrounding it had been 'greatly exaggerated'. HM Revenue & Customs has stated that no more than 30,000 companies would be affected.

The case involved Geoff and Diana Jones, who both held shares in Arctic Systems Ltd, an IT consultancy. They both received dividends but it was only Mr Jones who generated the company's income. Mr Justice Park ruled that the arrangement was caught by anti-avoidance legislation with the effect that the dividends paid to Mrs Jones should be taxed as part of her husband's income.

A major reason for the decision was that Mr Jones drew a very low salary from the company in order to fund the dividend payments to his wife. This meant that the arrangement was treated as a 'settlement' for which Mr Jones had provided funds. The judge suggested that it would be harder for HM Revenue & Customs to establish that there was a settlement where the working spouse is paid a salary at a commercial rate.

Many business owners have set up similar arrangements to save higher rate income tax of up to £9,000 a year. Measures were introduced in 2004 to reduce the attraction of paying dividends for companies with profits below £50,000, but they did not affect the potential income tax saving from paying dividends to make use of a spouse's otherwise unused basic rate tax band.

Not all family companies will be affected. Paying a commercial salary to the working director should minimise the impact of an attack on dividends. If both spouses work in the business and are remunerated accordingly, HM Revenue & Customs is also unlikely to find fault. However, according to guidance issued last year, they will look closely at arrangements with the following features:

- The major earner draws a low salary to allow dividends to be paid to others.
- There are disproportionately large returns on capital invested.



Husband and wife businesses threat

- Some shareholders waive dividends, enabling the company to pay higher dividends to shareholders who pay lower rates of tax.
- The existence of different classes of shares, enabling dividends to be diverted to shareholders who pay the lower rates of tax.

The decision in this case has by no means spelled an end to tax planning for shareholders of family companies but, with this decision under HM Revenue & Customs' belt, greater care will be needed. We can advise you what is likely to be acceptable and what arrangements you should avoid, as well as ensure that your tax returns are correctly completed.

TRY EMPLOYER-PROVIDED COMPUTERS AND BICYCLES



Lending employees computer equipment and bicycles is an increasingly tax-favoured perk – which has now been improved by the Finance Act 2005.

The government-sponsored Home Computer Initiative encourages employers to set up computer loan schemes, and envisages that employees will generally buy their computers after the end of the loan period – typically three years.

Employees were already exempt from tax on the first £500 of annual benefit on computers loaned to them by their employer, but until now could be taxed on buying the computer after the end of the loan period, even if they paid market value for it. The Finance Act has removed this charge.

The Act also prevents a tax charge on employer-provided bicycles that employees buy at market value. Employees were already exempt from tax on the use of a bicycle owned by the employer.

TAXPAYERS WIN GROUP COMPANY TAX CASE

The government may have to repay billions of pounds of tax to companies that have been prohibited from offsetting losses of EU group companies against UK company profits. In a preliminary opinion, the Advocate General of the European Court of Justice has ruled in favour of a claim by Marks and Spencer that restricting group relief to UK companies is a breach of EU law on discrimination against cross-border investment. If the EU court follows his recommendation, the case will represent the biggest victory so far for taxpayers relying upon EU rights to challenge discriminatory tax rules.

Many companies have made claims, the results of which are awaiting the final judgement in this case. Companies that have not yet claimed relief for EU losses should do so quickly before the government moves to change the law to stop them.

Business

DON'T THROW AWAY YOUR COMPANY IDENTITY



from items such as computer drives before selling, giving away or scrapping them.

More than half the hard drives on computers sold by organisations still contained sensitive information that could be used by criminals, according to a University of Glamorgan study.

The study examined 105 computer hard drives which had been purchased on internet auction sites, and was able to access 92 of them. Among other things, the researchers discovered insurance information, personnel details and even a template for printing a

university degree. Businesses could be helping confidence tricksters to steal the identities of their staff and customers, unless they have proper procedures in place. Individual identity theft has received a lot of publicity, but the focus of this form of criminal activity is now moving on to attacking companies.

Identity theft is an increasingly widespread crime and one that businesses must take measures to combat. Central to this is ensuring that all sensitive data about the business, staff and customers is stored and disposed of securely.

Recent research shows that businesses and organisations are also failing to ascertain that they have removed sensitive information

There are serious risks for businesses if they do not take some measures. If the information held on computers' hard drives is not successfully removed, the Information Commissioner has promised to bring the full weight of the Data Protection Act to bear on those breaching regulations by failing to provide due care.

Just erasing and throwing away your old drives is not enough to stop potential problems. The surest method to ensure that data is eliminated is the physical destruction of the hard drive. If you intend to resell or part-exchange the disks, it is essential to ensure that criminals cannot recover your key data.

regular cash donations out of their gross income to charities of their choice. This means that they get immediate tax relief at up to 40%. With the government matching for the first six months, a higher rate taxpayer's donation of £6 a month will be worth £20 to the charity. A basic rate taxpayer would need to give a net £7.80 for it to be worth £20.

The grants scheme is administered by the Institute of Fundraising, in partnership with Business in the Community. Further details are available at: www.payrollgivinggrants.org.uk

NEW INCENTIVE FOR PAYROLL GIVING TO CHARITIES

A new cash incentive of up to £500 is on offer to employers who set up a payroll giving scheme for employees to make charitable donations.

The grants will be available to employers with fewer than 500 staff if they sign up to payroll giving before the end of 2006. Employers that have set up schemes since 6 April 2004 will also qualify. In addition, the government will match pound-for-pound the first £10 that each employee donates every month for the first six months.

Payroll giving enables employees to make

Taxation

REVENUE AND CUSTOMS UNITE

The Inland Revenue and HM Customs & Excise merged in April to become HM Revenue & Customs (HMRC). The two departments already shared an executive chairman, David Varney, in anticipation of the merger. A consultation document issued alongside the Budget in March explained that 'the new department wants to deliver real benefits to small businesses by reducing the administrative burden the tax system imposes on small businesses, and improving its relationship with them'.



The merger, which was marked by the launch of a joint website, is only the start of a process of bringing together the administration of the main business taxes, such as carrying out joint tax and VAT inspections.

Law

WELCOME UPDATE FOR COMPANY LAW

The government has decided to go ahead with reforms to company law that will simplify procedures for small companies. Among the proposals are the removal of the requirement for private companies to have a company secretary, simpler model articles of association, and abolition of the rules prohibiting companies from providing financial assistance for the acquisition of their own shares.

All directors will have the option of filing a service address at Companies House instead of their home address. At present, directors can only withhold their private address from the public record if they can demonstrate a security risk. The Company Law Reform Bill will also include a statutory statement of directors' general duties, which at present are established in case law. This will provide greater clarity and allow the law to be updated in line with modern business practices.