

Client News – December 2004

As everyone gets ready for Christmas, it's a busy time of year in the tax world. We're writing now to update you on a few things. Please take time to skim through this document – its contents are important.

- Pre Budget Report
- Tax Enquiry Insurance Schemes
- Paying your Tax this January – important if you are a company with a 31 March year end or are under Self Assessment (including company directors)

(please take time to read this to avoid a deluge of phone calls to our office)
- Online employers filing
- New Staff at Garbetts

Pre Budget Report

Gordon Brown delivered his pre budget report on Thursday 2 December – eagerly awaited as we had been promised a report on the future taxation strategy for small businesses and limited companies.

Alas – as is often the way – what we had was more of a damp squib.

Here are some of the main points as they affect small businesses:

- Revisions to tax bands, NI bands and rates and tax credit rates for 2004/05, broadly in line with inflation. We will not know about vat rates and tax rates until the spring 2005 budget.
- Package of tax anti avoidance rules, most, if not all, of which are aimed at the big boys. Unlikely to worry small businesses, although the statement the Government put out simultaneously saying they would block any further loopholes *retrospectively* back to 2 December was interesting and ominous. Interesting, but commentators are not sure of the legality of this, ominous because the Government doesn't seem to mind whether its legal or not. All the usual – now expected – tosh about “unacceptable tax avoidance” and “fairness” was trotted out here; moral blackmail again, as if tax is a voluntary duty like visiting an old maiden aunt in hospital.
- Publication of the interim Hampton report on “Reducing administrative burdens: effective inspection and enforcement”. Although the main thrust of the report is premises type inspections, eg fire, food safety, health and safety, there could be a spin off on reductions in business paperwork and form filling, so the promise of better risk assessment and a more hands off approach could be good news, but lets see what happens in practice.
- more on child trusts funds, the so called “Baby Bonds”. It has to be questioned just how important this is, and is it worth a ream of paper in each budget for £250 or £500 per child?
- formation of a new small business unit at the “Heart of HM Revenue and Customs” (the name for the soon to merge Inland Revenue and Customs and Excise). This promises us:

- joined up systems so that business needs to provide information only once, where possible through a single form
- integrated audits covering direct (i.e. Income Tax, NI and Corporation Tax) and indirect tax (i.e. vat and paye)
- a single account through which all payments and repayments may be made (or cynically a single reference for losing all forms sent in)
- streamlined and effective support and access to information in a way that better suits small business customers, including more effective use of information technologies (sic) and the internet (or put another way, all the civil servants will be out auditing, so don't ring us with any questions, search our web site or sod off).

The press release goes on to say it will take a while to achieve this, so the first step will be consultation on scope for a single tax return for all small business taxes.

Doubtless this is all well intentioned but probably the single best thing Government could do with small business and small business taxes for a while is to stop medalling – just let the existing system settle down – consult often, and legislate infrequently. Of course, this will not happen.

Meanwhile, would you fancy an “integrated audit covering direct and indirect tax? A very good reason to have tax enquiry insurance (see later in this document), as these inspections will be time consuming, worrying and not much fun – even if you think you're conscience is clear - and there will be more of them than there are now.

- National employer training programme and a report on the future skills need of the UK economy. The pre budget report expressed concern at the productivity gap with our neighbours, the lower rates of small business start up in the UK compared to the US, and the skills gap over other parts of the world. Of course, our “joined up” civil servants don't realise that if you tax enterprise into the ground with IR35, S660, IR591, Tax Credit administration, Social Chapters, Disabled Access and whatever else you can think of to throw in, then most entrepreneurs are going to either say “Sod it” or revert to the black economy (or both).

- 10 year child care strategy – so if little Johnnie is just starting school now, he'll be doing his GCSE's when they finish – that's reassuring, isn't it? (Of course, if you're an ambitious Chancellor of The Exchequer with a very young child at home, and an eye on the bosses job this could be useful).

- 10 year science and innovation investment framework (to give us a new generation of entrepreneurs to tax).

Etc, etc – why do all Gordon Browns budgets and pre-budgets sound the same after a while?

Small companies, the self employed and the tax system

Small companies, the self employed and the tax system was the title of the “discussion paper” published with the pre budget report, as promised in the spring budget this year.

To put this in context, in the 2002 budget corporate tax rates were cut sharply and a veritable floodgate of incorporations (sole traders and partnerships becoming limited companies) started. The accounting profession had told the Government this would be the case, the Government either refused to believe it or was too pig headed to accept the advice, and so it came to pass 18 months later in the 2003 pre budget, the Government was bleating about “unacceptable tax avoidance by small companies”.

This led to the so called IR591 rules, known more formally as “non corporate distribution rules” which came out in the 2004 budget, and imposed a minimum 19% Corporation Tax charge (except when you do the maths its nearer 18%) on small companies – almost but not quite – reversing the changes of 2002. Almost? Well, it would have been easier for the Government to eat humble pie, admit the 2002 tax cuts were a cock up and reverse them, but there is nothing as vain as a politician, so that clearly wouldn’t happen. Instead the IR591 rules take up several pages of the 2004 Finance Act, with their own loopholes and idiosyncrasies.

Bringing things up to date at the time we were presented with the IR591 rules we were promised a report on small business taxation, which is what we now have.

Its publication last week was greeted with dismay by tax commentators as it can only be described as lightweight – 23 pages of very little. No mention of IR35, S660A or IR591. No mention of the increased aggression of the Inland Revenue. No mention of the threat which appeared in the press in the summer of increased NI on “lifestyle” businesses.

We do get a nice treatise on the different tax regimes applying to Sole Traders and Companies, although some of the key advantages of companies over sole traders aren’t mentioned. Why? Don’t they understand them? Do they understand them but not want to advertise them? Do they just hope they’ll go away? Eg the benefit of Business Asset Taper Relief on winding a company up, and the very important benefit given by a company of being able to reinvest profits at a low tax rate compared to that suffered by a sole trader or partnership.

We also get diatribes about “Tax motivated incorporation”, saying “...the Government expressed its concerns about the increasing numbers of self employed individuals adopting the corporate legal form for tax reasons rather than as a step to growth, often as a result of marketed tax avoidance schemes. The Chancellor therefore introduced a 19% minimum rate of Corporation Tax where profits are distributed to individuals by way of dividends, in order to target low tax rates more accurately towards those small businesses that “reinvest their profits for growth”.

Translated this means something like “We’re upset that you didn’t play fair, or at least what we think is fair, and you nasty cheating small businesses owners have used our lovely flagship tax cuts to save tax in ways we didn’t think you would”.

Once again, the Government conveniently overlooks case law like Lord Clyde set out (*Ayrshire Pullman Motor Services & Ritchie v CIR 1929*) “*No man in this country is under the smallest obligation, moral or other, so to arrange his ... business or ... property as to enable the Inland Revenue to put the largest possible shovel into his stores. The Inland Revenue is not slow—and quite rightly—to take every advantage which is open to it under the taxing statutes for the purpose of depleting the taxpayer’s pocket. And the taxpayer is, in like manner, entitled to be astute to prevent, so far as he honestly can, the depletion of his means by the Inland Revenue.*”

So, where does this leave us? For the past few months it has been difficult for us to advise clients properly whether a limited company is the route to follow. This paper from the Government doesn’t change that uncertainty in the long run. However in the short run, Companies are still favourable.

Certainly for those clients already using a limited company you are OK at present – in most cases the company delivers considerable tax savings, 18% as a company rather than 30% as a sole trader/partnership.

For those who are still sole traders and are thinking about incorporating, its probably still sensible to do so.

It seems clear that this is being kicked out by the Government into the long grass post the next election, so the earliest we will see any changes on the statute book would be 2006, and more likely later. Indeed, will we see any changes? The paper is so vague that one gets the impression the Government doesn’t really know what to do.

Tax Enquiry Insurance Schemes – how do they fit in with our fixed fee packages?

As you will probably be aware, over the last year we've launched two Tax Enquiry Insurance Schemes, in association with our partner Qdos Consulting Limited, a national company who have extensive experience with such schemes.

Our first scheme, early on in 2004, was a specialist one for personal service companies to address the risks and issues with IR35 and S660a in particular. More recently we've launched a more general scheme for all of our clients, starting from 1 December 2004 onwards.

You should have had details of these schemes already, but if not they are at:

<http://www.garbetts.com/download/teiinsurance.pdf>

for further details of our client wide general scheme or

<http://www.garbetts.com/download/pscinsurance.pdf> and

<http://www.garbetts.com/download/pscinsurance-taxliabilitycover.pdf>

for the special schemes available for personal service companies (PSCs).

One of the questions which has come up on a number of occasions is how do these schemes fit in with our fixed fee packages, and doesn't our existing fee arrangement with Garbetts cover such matters?

Our fixed fee schemes cover routine matters, these insurances are intended to cover non routine matters. To this end there has been no change in our terms of business, and we are not starting to charge separately for matters which would have been historically covered by our fixed fees.

For details of our fixed fees, and what is and isn't included in your regular fee, see:

<http://www.garbetts.com/download/Basisofquotation.pdf> and

<http://www.garbetts.com/tcb>

Essentially routine matters are covered by the fixed fee; non routine items – major items of additional work – are not. By way of example:

- Supposing the Inland Revenue raise an aspect enquiry into your tax return concerning repairs and renewals. They ask for a breakdown, which we supply, they are happy with that and close the enquiry. That would be routine and covered by our agreed fixed fees. However suppose on supplying the breakdown the Inland Revenue say they are unhappy, as a result of which much more work is needed, eg we may have to host a meeting with the Inland Revenue to inspect your premises, analyse and break down repairs and improvements costs over a number of years, research some case law, obtain a surveyors report – that would not be routine and would be charged separately to your fixed fee at our hourly rates, but would be covered by insurance if held.

- Supposing the Inland Revenue or HM Customs visit for a review of your PAYE or VAT records at your premises. If there are one or two small queries arising then that would be covered by your fixed fee. If there are several queries, and maybe an employed v self employed status challenge from the Inland Revenue, or a large back vat assessment from HM Customs and Excise, then that would not be routine and would be charged separately to your fixed fee at our hourly rates, but would be covered by insurance if held. In this instance, please bear in mind the Inland Revenue and HM Customs and Excise will scrutinise your records in much more detail than we will when preparing your accounts; just because we've found no major issues when preparing your accounts, you cannot assume you are "clean".

- You are buying a competitor out, and need a brief meeting with us on various issues – that would be covered by the ad hoc advice element of your fixed fee and no additional charge would accrue. However suppose you needed us for more than just a short meeting, eg preparation of forecasts for your bank, a meeting with a financier, reviewing a draft contract and talking to your solicitors, assisting in due diligence investigations – that would be a major item of additional work and charged accordingly.

So what type of tax enquiries does the insurance cover:

- full tax enquiries – where the Inland Revenue ask for all your records and goes through them with a fine tooth comb to check your accounts and returns. These are comparatively rare – perhaps 2% of businesses are subject to one each year - but they are time consuming and can become very acrimonious. The Inland Revenue will be looking for errors, and will be biased against you from the outset.

- aspect enquiries – where the Inland Revenue ask for more information on an aspect of your tax return or accounts (these can sometimes be cleared in one simple letter, other times they can be as acrimonious as a full enquiry).

- employer compliance disputes – disputes arising from the Inland Revenue reviewing your records relating to employees (and if you are a company this includes the directors of course), such as PAYE/NI deductions, expense payments, status, CIS deductions and similar. Again, these can be very acrimonious, and can focus a lot of time on small amounts. More importantly, whereas tax enquiries can only be opened in the year after the filing date for a tax return, employer compliance reviews can go back six years. The costs of attending an inspection are not covered (except under our PSC schemes), but any subsequent dispute or assessment is.

- vat disputes – disputes arising from HM Customs and Excise reviewing your records. Again the costs of attending an inspection are not covered but any subsequent dispute or assessment is

A couple of points to watch:

- Cover is invalidated if your returns are submitted late

- Cover is on a claims notified basis, so any claim starting during the insured period, regardless of the period the claim relates to, is covered.

- If you think you have suitable cover from the FSB, your general insurers, or similar, think again as often such policies stipulate that the insurers own accountants be used to settle any claim, i.e. a stranger who will not know you or your affairs. The cover offered by the FSB works in this way, and therefore cannot be recommended.

Paying your Tax this January

January is a very busy month in our office with the final remnants of 2003/04 tax returns to be processed, and tax payments due.

Without a shadow of doubt this is our busiest time each year, and if we are to provide you with a good service, we need your help and patience.

Below are some reminders and frequently asked questions this time of year about tax returns and payments – it helps us if you can take these on board before contacting us with any queries:

For Companies with a 31 March year end deadlines are:

- Corporation Tax payments due on 1 January 2005 – interest at 6% on late payments
- Accounts to Companies House by 31 January 2005 or a £100 fine
- Accounts and return to Inland Revenue by 31 March 2005

The dates may be different if this was your first year in business.

Paying your Corporation Tax:

- if your accounts were completed a little while ago, the Inland Revenue should have processed them and issued a payment notice – use this.
- if your accounts have been completed but not processed by the Inland Revenue then refer to the letter we will have sent you with your accounts regarding the amount of Corporation Tax due. If you have a blank payslip, pay with this (make sure its a Corporation tax payslip – you cannot use, for example, a personal Self Assessment one).
- if you cannot find your payslip, then please refer to the letter we will have sent you with your accounts for the amount due, and send a cheque care of our offices, payable to “Inland Revenue”.
- if your accounts are not complete yet then you may want to make a payment on account to minimise any interest due – if you have a Corporation Tax payslip for the Inland Revenue, use that, or else forward a cheque c/o our office.

Filing your accounts at Companies House:

- we will have sent you your accounts for Companies House (called abbreviated accounts) at the time we sent you your accounts for signature
- its your responsibility to send these accounts to Companies House on time; they should be sent direct and not returned to us. Companies House will make no allowance for postal losses so recorded delivery is recommended.

For companies with year ends other than 31 March, the same procedures apply, but the dates vary accordingly.

For individuals under Self Assessment (including company directors) the deadlines are:

- 31 January 2005 – pay your 2003/04 final balance and your 2004/05 1st payment on account – interest at 7.5% on late payments
- 31 January 2005 – file your Self Assessment return (£100 penalty if late – more for partnerships)
- 28 February 2005 – 5% surcharge on any 2003/04 tax still unpaid

Paying your Self Assessment bill:

- if your return was submitted a little while ago, the Inland Revenue should have processed it and will issue a payslip towards the end of December/early January – use this. Let us know if the amount requested differs from what we told you to pay (in the letter enclosing your tax returns for signature).
- if your return has been submitted but not processed by the Inland Revenue, then the Inland Revenue will issue a blank payslip towards the end of December/early January – use this. Please refer to the letter we sent you with your returns for signature as regards the amount due.
- if you have not given us all the information needed to complete your accounts or returns, please let us have the outstanding items as soon as possible to guarantee timely submission of your returns. When we send you your return for signature please make a note of the amount of tax due, and pay as per the guidance above.
- if your accounts or returns have been sent to us late, they may not be completed by 31 January in which case you will receive a penalty notice which will be your responsibility to pay. You can eliminate any penalty by making a payment on account which is equal to, or exceeds, the tax due by 31 January.

Important

If there are queries on the above, then please contact us – e-mail is preferred.

If your accounts and returns for 2003/04 are not yet complete please let us know if you are going to be away at all during late December/January so we can schedule work accordingly with regard to signing documents and clearing queries.

Due to staffing issues and special projects, we have a backlog of work in the office at present but we are on schedule to ensure that all accounts and returns submitted to us to date will be submitted on time for the 31 January deadlines. However if you haven't sent your accounts / returns into us yet, then we will have to work on a first come, first served basis so please get them to us as soon as possible.

Online employers filing

Online employers filing starts from 2004/05 on a voluntary basis, and over coming years becomes compulsory – the exact date of compulsion depends on the size of your business:

- over 250 employees - from 04/05 (April 2005)
- less than 250 employees but more than 50 - from 05/06 (April 2006)
- less than 50 employees - from 09/10 (April 2010)

Small employers are however entitled to incentives for filing early as follows:

Tax year	Total £
2004-05	£250
2005-06	£250
2006-07	£150
2007-08	£100
2008-09	£75

Remember, if you are a company then the director counts as an employee, meaning that that even if you have no other staff, you should be entitled to these incentives.

Where we do payroll and employers compliance for you – which will be most, but not all, of our limited company clients – we will claim the incentive for you automatically on a split basis. This means that you will receive the full benefit of the incentive, but we will invoice you for an amount equal to half of it. In other words we do the work and obtain half the benefit, you do nothing other than sign a form for us and enjoy the other half of the benefit.

Please let us know if you need more details on this.

New Staff at Garbetts

Welcome to some new names:

- Laura Brackley who has joined as a receptionist/assistant PA
- Erica Barton who has joined to assist Carolyn Osman in our outsourcing team
- Helen Witts who has joined as senior technician/managers assistant

Our current staff team is:

- | | | |
|--------------------------------------------------|-----|------------------------------------------------------------|
| Paul Garbett FCCA | - | Principal and Managing Director |
| Robert Garbett | - } | Non executive |
| Sandra Garbett BA (Hons) Law | - } | Directors |
| Alan Jeffery AAT | - } | Accounts managers |
| Mark Paxton ACCA, AAT | - } | |
| Susan Albest (associate) | - } | |
| Carolyn Osman AAT | - } | |
| Julie Barrett | - | Tax manager |
| Jo Harris | - | Tax technician |
| Helen Witts | - | Senior accounts technician/managers assistant |
| Rosie Wersby | - } | Accounts
Technicians |
| Nicola Male | - } | |
| Erica Barton | - } | |
| Christian Zanti | - } | |
| Rosie McCourt | - } | |
| Deborah Richards | - | |
| Natasha Simons | - } | Secretarial
and Reception Team |
| Laura Brackley | - } | |
| June Garbett | - | Bureau Payroll, Credit Control and Practice Administration |
| Jennie Lewis
(Tamar Lewis Consultancy) | - | Associate Marketing Manager |
| Simon Sheehan
(Paul Jones Financial Services) | - | Financial Advisor |

All our staff can be e-mailed using firstname.lastname@garbetts.com.