

# CROMBIES

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# INSIGHT

## Seasonal gifts

So you want to give your employees a present to reward them for their hard work. Perhaps you were thinking of a bottle of something, some chocolates or even a turkey - but are there any tax implications?

HMRC allow you to give minor gifts to employees, for example flowers to an employee who is in hospital, without having to report this as a perk of the employee's job through the benefits in kind system. However, where all employees are receiving a gift, the employer may need to report the gifts. If the form P11D is used, which reports employees' benefits, the employees will end up paying tax on the value of the gift. This may not be the best way of dealing with this issue as the tax charge may leave a nasty taste. Would you want to pay tax on a gift?

Alternatively the employer can pay the tax on the gift using a PAYE settlement agreement. Do get in touch if you would like to know more about this.

## What is happening to CGT?

The big surprise in the Pre-Budget Report was the new 18% rate of capital gains tax (CGT) and the removal of taper relief. Nearly ten years ago, Gordon Brown invented taper relief but his successor has abolished it for gains arising on or after 6 April 2008.

If you hold business assets, including unquoted shares and land and buildings used by a trade, for at least two years, the capital gain which arises on their sale may be discounted by 75%. That works out at just 10% tax for a higher rate taxpayer or 5% for a basic rate taxpayer.

Indexation allowance for individuals and trustees (but not for companies) is also to be abolished from 6 April 2008. This will simplify capital gains calculations, but it does not hide the fact that the potential 10% tax rate payable on the sale of business assets will jump to 18% from 6 April 2008.

If you are planning to sell your business you may save at least 8% tax if you sell before 6 April 2008. The exact calculation of the tax due on the sale will depend on how the business asset has been owned or how the property has been used throughout the last ten years, so ask us to check the potential tax bill for you.

The new flat rate of CGT will be good news for most people selling a non-business asset, such as a buy to let property, or quoted shares. At present the maximum a gain can be reduced by taper relief on non-business assets is 40%, which works out at 24% for higher rate taxpayers and 12% for basic rate taxpayers. If you expect to make a gain on a non-business property, it may be better to sell on or after 6 April 2008 to save at least 6% on your tax rate, possibly more.

However if you acquired investment properties well before 1998 you need to consider the effect of the loss of indexation allowance from 6 April 2008. Its effect is to uplift the cost of the asset to reflect general inflation from the date of acquisition to April 1998. An asset purchased in September 1988, for example, would qualify for a 50% uplift in cost if sold before April 2008. So if you have an investment property with a relatively high base cost, indexation allowance may reduce your effective rate to below the 18% rate.

The annual capital gains exemption (currently £9,200) will be retained as will other capital gains reliefs such as hold-over, roll-over and the deferral of gains using the Enterprise Investment Scheme. So when you make relatively small gains in a single tax year they will normally be tax free. However, this allowance is not transferable between spouses, so putting property into joint names before a sale can still save tax.

Please contact us if you have any questions.



# Buying or leasing business equipment

If you are planning to buy or lease some new business equipment over the next year, you should consider the changes to the tax reliefs known as capital allowances, which are due to take effect from April 2008.

## First the good news

All items that qualify as plant or machinery, including fixtures in buildings and vans, will be eligible for the new Annual Investment Allowance (AIA) of £50,000 if purchased on or after 1 April 2008 for companies, and from 6 April 2008 for unincorporated businesses. The allowance will give immediate tax relief for the cost of equipment within the annual limit of £50,000, which is much better than the spreading of tax relief over several years, which applies to equipment purchased before April 2008.

Where your accounting year does not start on 1 April or 6 April the first AIA limit will be proportionally reduced. If a company year runs from 1 January 2008 to 31 December 2008 it will get nine months' worth of the AIA (£37,500) for purchases made between 1 April 2008 and 31 December 2008. Purchases made before 1 April 2008 will qualify for the existing First Year Allowances of 50% for small businesses and 40% for medium sized businesses.

## Now the not so good news

The writing down allowances for plant and machinery are being reduced from 25% to 20% and this will affect all equipment that has already been purchased and not fully relieved for tax purposes. This means it will take longer to achieve full tax relief for any equipment purchased before 1 or 6 April 2008, or bought after that date if it is not covered by the AIA limit of £50,000 per year. This adds some complications, so we will need to do some calculations to see if you should purchase your new equipment before or after 1 or 6 April 2008, or before your current year end. Please talk to us before you buy.

Another change will affect the tax deduction for the cost of certain fixtures in buildings (referred to as integral fixtures). Currently many such fixtures qualify for a 25% writing down allowance but for purchases on or after 1 or 6 April 2008 the rate of the allowance will only be 10% (if not covered by the AIA). We don't know exactly which assets will be classified as integral fixtures, but if you are considering buying a building containing a lot of fixtures, it may be worthwhile sealing the deal before 1 or 6 April 2008.

## Is it better to lease?

If you lease equipment you can claim the capital allowances on the effective capital cost of the asset if the agreement is a hire purchase contract. Otherwise the capital allowances will normally be claimed by the lessor, unless special rules apply. If you lease a car the lease rentals you can set against tax are restricted where the car costs over £12,000.

If you are planning to incur capital expenditure or to take on a lease of plant over the next few months please talk to us before you do so. We can help you with the calculations.

# Age discrimination

On 1 October 2006 the government introduced legislation to protect people from being discriminated against on the grounds of age. The regulations include both employment and vocational training and cover people of all age ranges, both young and old.

The upper age limits for redundancy and unfair dismissal were removed and compulsory retirement under the age of 65 was made unlawful.

All employees were given the 'right to request' to work beyond the default retirement age of 65 with employers being required to follow a stringent procedure to ensure that all such requests are considered.

Employees can be retired at the default age of 65 by the employer provided the correct procedure is followed by notifying the employee between 6 and 12 months prior to their expected retirement date. The employee's contract must be terminated on the grounds of retirement only. An Employment Tribunal in Southampton recently found in favour of an employer who dismissed an employee on the grounds of retirement at the age of 65 as they had followed the statutory procedure.

Age Concern believes that this part of the legislation is in fact unlawful as it contravenes European Law and

currently has a case going through the European Court of Justice (the 'Heyday' challenge). A ruling on this case is not expected until 2009.

Although this claim may change the UK age discrimination law it is unlikely that any employer currently following the current age discrimination law will be held liable for retrospective claims.

Figures published by The Tribunals Service (September 2007) indicate that out of 132,577 age discrimination cases lodged only 972 were accepted with no clear decisions on the implementation of the age discrimination policy. The newly formed Commission for Equality and Human Rights are likely to issue a code of practice which may clarify some of the aspects of the age discrimination regime.



# New employees but no P45?

An employee who starts work without a form P45, showing the pay, tax deductions and 'tax code' from their last employment, has to complete and sign a form P46. This form enables the new employer to decide on the appropriate tax code to be used. This will be used until the individual's records arrive at the new employer's tax office at which point a new tax code may be issued to reflect their circumstances.

## The form explained

**A** - The employee hasn't worked this year, or has not previously worked at all.

The employer will use the tax code 522L which means that the employee can receive pay of £435 a month without paying any tax. As the code is applied cumulatively, back to the beginning of the tax year, if they start working in December they can receive 9/12ths of the full tax year's allowances of pay (£3,915) before paying any tax at all.

**B** - The employee has already worked or claimed Jobseeker's Allowance this tax year but hasn't received or has lost the P45.

These employees are taxed using the 522L tax code, but on a 'Month 1' basis. This means that each month is taxed without reference to any previous earnings. They will be taxed on any earnings above £435 a month. They may suffer tax deductions at a higher rate than normal, until their records are updated and HMRC issue them with the correct cumulative tax code.

**C** - The employee has another job or receives a pension.

They will be taxed at the basic rate of tax (22%) on their pay.

**D** - Students who took out a loan whilst undertaking higher education from 1 September 1998 are required to repay this loan as a deduction from their pay when they start working.

The loan repayments are not due unless the employee earns £1,250 a month. The repayments are due on pay above £1,250 at a rate of 9%.

**When employing someone new the last thing you want to do is to take too much or too little tax from them. By using the P46 form correctly this ongoing problem should be avoided.**

# NMW clampdown - is your business complying?

From 1 October 2007, the rates of National Minimum Wage (NMW) increased again:

- the adult rate (workers aged 22 and over) increased to £5.52 (£5.35)
- the development rate for 18-21 year olds increased to £4.60 (£4.45)
- the development rate for 16-17 year olds increased to £3.40 (£3.30).

However, the government has become increasingly concerned that large numbers of employers are not paying the requisite hourly rates. In December 2006, the then Chancellor Gordon Brown announced an attempt to improve enforcement of the NMW by increasing the resources allocated to tackle non-compliance by 50%. There is also ongoing consultation on raising penalties for the seriously non-compliant.

HMRC do not have the resources to tackle non-compliance in every business around the UK at the same time, so they are addressing the issue by business sector. HMRC have let it be known that they are interested in three particular sectors so far - hairdressers, the childcare sector and the hospitality industry.

This stance has been supported by some high profile cases. In February of this year, the Court of Appeal ruled that Butlins and Haven holiday camps were in breach of the NMW legislation. It was found that some seasonal workers, such as bar staff and receptionists, were charged for gas and electricity when they lived on site between 2004 and 2005. In his judgment, Lord Justice Buxton said "if the sum of £3 per week were to be deducted from their wages that would reduce remuneration below the national minimum wage level."

In the first NMW criminal prosecution in August 2007, a children's nursery owner was fined £2,500 and £500 costs. The judge commented that the owner had "demonstrated a clear and deliberate intent to obstruct officers and this was a scandalous breach of the National Minimum Wage legislation."

Andy Millican, Criminal Investigation Team Leader for HMRC, said "we have a duty to ensure workers receive their salary entitlement. The majority of employers do assist us with our investigations, but if they don't we will pursue cases through the criminal courts."

It is clear that HMRC are serious about NMW non-compliance, so don't be caught out. The NMW rules can be complicated, so please get in touch if you have any concerns about the legislation.

# VAT on home computers

In 1999 the government introduced an exemption which allowed employers to lend a computer to their employees tax free even if there was only private use of the computer. In 2004, the government launched the Home Computing Initiative (HCI), which encouraged employers and employees to take advantage of the exemption.

HMRC considered the VAT position at that time and, although there would generally be some private use of the computer under HCI agreements, agreed that as long as there was some business use, any VAT incurred could be deducted in full.

The income tax exemption was withdrawn for new HCI agreements entered into from 6 April 2006 onwards and HMRC have now reviewed the VAT position. From 13 August 2007 onwards, HMRC's previous policy to allow full VAT recovery without any adjustment for private use was withdrawn (subject to some transitional provisions for existing arrangements).

Does this mean that businesses cannot recover the full amount of VAT? They

may still be able to do so but they must consider why the computer is being provided to the employee. Businesses will be able to make a full VAT reclaim where the computer is necessary for the employee to carry out their duties and any private use is insignificant. In these circumstances HMRC's view is that it is 'unlikely that any private use will be significant when compared with the business need for providing the computer in the first place'. This is in line with the approach taken for income tax.

Businesses that cannot demonstrate that it is necessary to provide an employee with a computer in order to carry out their job will only be able to reclaim a reasonable proportion of the VAT incurred.

# Do you have double the nil-rate band?

**Inheritance tax (IHT) worries a lot of people because the IHT threshold, known as the nil-rate band, has not been increased in line with house prices over recent years. On death, all your wealth, including the value of your house, is taxed at 40% on all amounts above the nil-rate band, which is currently £300,000.**

If your house is jointly owned the actual wealth in your name may be less than the £300,000 threshold. When the first spouse or civil partner dies and leaves everything to the surviving spouse or civil partner there is no IHT to pay, as the bequest is exempt from IHT for transfers between spouses and civil partners. However, when the surviving spouse or civil partner dies there may be a large IHT bill as all the wealth previously owned by the couple is now in the hands of one person, with only one nil-rate band to use.

The Chancellor has tried to solve this problem by allowing any unused nil-rate band on the death of the first spouse or civil partner to be transferred to the surviving partner who dies on or after 9 October 2007. That may give a total IHT exemption for a surviving spouse or civil partner of £600,000 (for 2007/08) rising to £700,000 for the tax year 2010/11.

Say Fred, a widower, died on 1 October 2007 with an estate worth £500,000. His executors will be required to pay IHT at 40% on £200,000 (£500,000 – £300,000) amounting to £80,000. If Fred dies on 1 November 2007, and his wife did not use her nil-rate band when she died, his estate has the benefit of two nil-rate bands totalling £600,000. Now Fred's executors will pay no IHT at all on his estate of £500,000.

The effect of transferring the nil-rate band could be achieved before this IHT change with the use of a discretionary Will trust. If your Will contains such a trust the Will does not necessarily have to be rewritten. If the only reason for the trust was to use each spouse's or civil partner's nil-rate band there may be little point in creating such a trust. However, there can still be advantages in creating a trust:

- a person may want to direct who the ultimate beneficiaries of the assets will be rather than leaving that decision to the surviving spouse or civil partner
- assets put into the trust on the first death may grow at a faster rate than the increase in the nil-rate band. That growth is not included in the surviving spouse's or civil partner's estate.

The inheritance tax change does not help couples who are not married or not in a registered civil partnership.

Please contact us if you would like more advice specific to your circumstances.

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