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Winter 09

Welcome



Mark Lamb

As we start the New Year we look back to 2008 and can only hope that the turmoil in the financial markets and the continuing problems affecting financial institutions, the property sector and other key elements of our economy are behind us. It is clear of course that we are in recession and that we all face challenging market conditions for at least the next couple of years.

Last year also saw a number of

regulatory and taxation changes including the temporary VAT reduction until this time next year, the final changes to the provisions of the Companies Act 2006, which companies will see biting shortly, and also the new Guernsey law which seeks to harmonise their regulatory requirements.

This edition of our Business Briefing also features an interesting article on cash generating loss reliefs available to

property companies which I hope those involved with in the property sector will be able to take advantage of.

On behalf of the partners and staff I would like to take this opportunity to wish you all a happy and peaceful 2009.

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Cash generating loss reliefs available to property companies



Steven Levine

The Government has introduced a number of corporation tax reliefs that enable companies to cash-in on their tax losses. Any method of generating cash during the current credit crunch is likely to be very valuable and these particular reliefs and opportunities open to companies in the property sector are set out below.

1. Research and Development Tax Reliefs

A common mistake with Research and Development Tax Reliefs is that it is widely considered that these are only available for pharmaceutical companies or other similar companies at the forefront of medical research. We have made many claims for companies in manufacturing and engineering, some of whom are within the property sector.

Opportunities include companies involved in developing modern methods of construction, solutions for sustainability and those products that deliver scientific or technological improvements over previously available versions. This is an incredibly wide opportunity.

Once the opportunity has been identified, the costs qualifying for relief are subject to a 75% uplift, then to the extent these uplifted costs enhance or create a tax loss, these

tax losses can be exchanged for a cash credit equivalent to 14% of the cost including uplift – subject to total PAYE and NIC paid during the accounting period.

Example 1: *A loss-making company incurring £100,000 of qualifying R&D expenditure would aim to trigger a cash refund of £24,500 – being £175,000 x 14%.*

There are many conditions covering issues such as the date the costs were incurred, the number of employees, the size of the company, the number and size of group companies, the type of any subsidies received, whether it is a going concern and the size of the project. Each claim will depend on its own particular circumstances.

2. Enhanced Capital Allowances

Enhanced Capital Allowances enable the entire cost of a capital asset to be deducted against profits. The types of capital asset that can qualify for this are very specific and can broadly be described as “eco- friendly”.

These assets cover a number of categories including amongst others boiler equipment, motors and drives, heating systems, refrigeration systems, water delivery and lighting. They are listed by manufacturer and model on the Enhanced Capital Allowances website and can be

accessed using www.eca.gov.uk.

Since 1 April 2008, where this deduction against profits has created a tax loss, this loss can be exchanged for a cash refund equivalent to 19% of the tax loss.

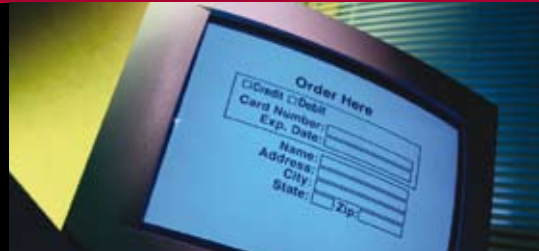
Any refund is restricted to £250,000 or the amount of PAYE and NIC paid to the Revenue during the accounting year if this is lower. Any cash refund can be clawed back by the Revenue if the capital asset is sold within four years.

Example 2: *A loss-making company spending £100,000 on qualifying assets would aim to trigger a £19,000 cash refund.*

The major opportunity here is on a property refurbishment involving the installation of “eco- friendly” capital assets although there are also opportunities arising on property re-fits. New properties benefitting from solar power and other ‘green’ energy initiatives should also benefit.

A further opportunity arises to companies carrying out refurbishments that will be able to identify these assets for their clients at the quoting stage so that they can differentiate their company from the competition and add real value to their product.

3. Land Remediation Relief
Even though Land Remediation



Reliefs have now been around for about seven years, it is still surprising how often these are omitted from tax returns and never claimed.

Essentially where companies – usually involved in property investment or property development – incur costs on removing, containing or treating contaminated land, the qualifying cost is uplifted by 50% for tax purposes. These qualifying costs should include related professional fees and preliminaries as well as the actual costs themselves.

Examples of contaminated land include asbestos, oils and heavy metals. The only condition is that the company must not be the original polluter.

This additional uplift of 50% can either reduce taxable profits or enhance tax losses. To the extent

that there are tax losses, the company can surrender the uplifted costs for cash at a rate equivalent to 16% of the combined costs of land remediation and the 50% uplift.

Example 3: *A loss-making company spending £100,000 removing asbestos from a factory would aim to trigger a cash refund of £24,000 – being £150,000 x 16%.*

Opportunities include property developers or investors who may be building on, converting or renovating old properties, industrial sites or garages. There are also opportunities for trading companies who are renovating newly acquired premises (whether industrial or not). Contractual terms for the sale of property can be crucial as vendors may be able to trigger additional proceeds through recognising potential claims.

Conclusion

Directors of companies who consider that they may qualify for any of these should seek professional advice as soon as possible. There are strict time limits for backdating claims and delays can be costly.

For completeness, it should be mentioned that non-corporation tax reliefs may also be available in certain circumstances including Stamp Duty Land Tax, VAT and Landfill Tax.

Steven Levine is a member of the Chantrey Vellacott DFK property group and heads the firm's R&D Unit.

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Chantrey Vellacott DFK welcomes three new partners in Colchester

With effect from 5 January 2009, Butt Cozens has merged with Chantrey Vellacott DFK (CVDFK). The merger brings the three Butt Cozens partners – Dawn Lay-Flurrie, Peter Gardiner and Melinda Simpson – to our firm. Mark Lamb, CVDFK Business Development Partner, is pictured with the new partners at their Colchester office. Butt Cozens has been established in Colchester for over 50 years from where it has delivered audit, accountancy and tax services to private individuals, partnerships, companies and the local business community. The firm also delivers strategic advice and assistance to clients to help their businesses perform more effectively.

CVDFK and Butt Cozens have worked together for more than 20 years, latterly through membership of DFK UK & Ireland. This association, of which we are a leading member, has skilled resources in more than 20 major

commercial centres through its 13 independent accounting firm members. The merger provides Butt Cozens' clients with direct access to the wider resources of our firm, particularly in the areas of taxation and corporate finance. These are areas in which we have already been working with some of their clients.

For CVDFK, the merger is an expansion of our existing presence

in Colchester. We have had an insolvency team based in the offices of Butt Cozens for more than three years, currently led by two specialist partners. We are looking forward to developing the range of services we can deliver locally to clients in East Anglia.

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L-R Melinda Simpson, Mark Lamb, Dawn Lay-Flurrie, Peter Gardiner



Companies Act 2006 - Accounting and Auditing Provisions



David Duvall

Sections 475-539 of the Companies Act 2006 bring together various provisions on auditing in CA 1985 together with the relevant requirements of several EU Directives. These are effective for accounting periods starting on or after 6 April 2008.

The most important of them concern:

- changes to the thresholds for small and medium companies
- minority rights
- the auditors' right of access
- the need to disclose the name of the auditor signing the report
- auditors' liability.

DBERR (Department for Business Enterprise & Regulatory Reform, formerly DTI) have raised the financial thresholds for accounts and audit for financial years starting on or after 6 April 2008.

The table below shows the changes:

Small company

Turnover	£6.5m
Balance sheet total	£3.26m
Number of employees	50

Small group

Turnover	£6.5m
Balance sheet total (net)	£3.26m
Number of employees	50

Medium company

Turnover	£25.9m
Balance sheet total	£12.9m
Number of employees	250

Medium group

Turnover	£25.9m
Balance sheet total (net)	£12.9m
Number of employees	250

Charitable companies no longer have special rules in this Act, since they are now covered by the Charities Act 2006.

Sections 482-483 allow a public sector auditor to audit non-commercial public sector bodies which happen to be constituted as companies.

Minorities in private companies have important rights under the Act as follows:

- Members holding not less than 10 % of issued share capital may require a company exempt from audit to have an audit for a financial year (s.476)
- Members holding not less than 5 % of voting rights may prevent an auditor from being automatically reappointed, e.g. where the company is not holding an AGM (s.488).

The Secretary of State has a new power (s.494) to require companies to disclose the terms on which they engage their auditors.

S.499 incorporates the provision in the 2004 Act to the effect that the auditor's right of access to information and explanations is extended to past officers and employees of client companies. This is further extended by Schedule 10, para 9(3) of the Act to previous auditors, as a result of the EU Statutory Audit Directive.

The auditors' report must now state, where the auditor is a firm, the name of the 'senior statutory auditor' who signed the report (ss.503-504). The only exception to this is if the company has notified the Secretary of State that the auditor is at risk of violence or intimidation.

It is a criminal offence for an auditors' report to contain statements or omissions which are misleading, false or deceptive.

Auditors resigning from a major audit (a listed company or one in the public interest) must now (s.522) deposit the statement of any relevant circumstances with the 'appropriate audit authority' (currently the Public Oversight Board). This is always the case for auditors of listed and public interest companies; for other companies it is only necessary if they are leaving office before the expiry of their term of office. The company must itself also notify the authority.

S.527 creates a new right for members of quoted companies. Holders of 5 % of the voting rights or at least 100 members holding an average of £100 of paid-up share capital may require the company to publish on a website a statement raising any matter concerning:

- the audit of the company's accounts,
- or
- any circumstances concerning an auditor's leaving office that they propose to raise at the next meeting where the accounts are to be discussed.

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Tax Snippets



Sarah Carter

Corporation Tax Small Company's Rate

The increase in Corporation Tax for small companies from 21% to 22% that had previously been planned to take effect from 1 April 2009 has been deferred to 1 April 2010.

Taxation of Foreign Profits

The Finance Bill 2009 will deliver an exemption from tax for most foreign dividends received by large and medium sized groups. The exemption will be supported by a worldwide debt cap on interest, extension of the unallowable purpose rules and consequential changes to the Controlled Foreign Company rules.

Trading Loss Carry Back for Businesses

Companies and unincorporated businesses will be able to carry back losses to earlier accounting periods than presently permitted. The measure will have effect for company accounting periods ending in the period 24 November 2008 to 23 November 2009, and for unincorporated businesses in relation to trading losses for tax year 2008-09.

The period that trading losses can be carried back will be extended from the current one year entitlement to a period of three years, with losses being carried back against later years first. However, the amount that can be carried back beyond the current one year will be restricted to £50,000.

Loan Relationships – Connected Companies

Currently, where connected companies (generally those under

common control) release trade debts that exist between them, the company that is relieved of its obligation is taxed on the 'profit' it has made. It is proposed that this company will not be taxed on that profit.

Interest on loans between connected companies, currently only allowed as a deduction on a paid basis rather than an accruals basis, will also be reviewed.

HMRC Business Payment Support Service

For businesses in temporary financial difficulty unable to pay their tax bills, HMRC will provide a new service to enable them to spread payment over a timetable they can afford.

Business Expenditure on Cars

From 5 April 2009 for unincorporated businesses and 1 April 2009 for companies, cars costing over £12,000 will be allocated to one of two general plant and machinery pools for capital allowances. Cars with CO2 emissions over 160g/km will be dealt with through the special rate pool with writing down allowances at 10%. Others will be in the main pool attracting allowances at 20%. Cars with CO2 emissions up to 110g/km will qualify for 100% allowance irrespective of cost.

Expenditure incurred before April 2009 will continue to be dealt with on the current basis for around 5 years, after which expenditure will be transferred to the main capital allowance pool.

From April 2009, there will be a disallowance of 15% of the rental payments where a leased car has CO2 emissions above 160g/km.

Plant & Machinery

There are a number of changes to the tax treatment of leased plant & machinery, all of which are made retrospective to 13 November 2008. The main change is briefly detailed below.

A typical refinancing strategy for a business is to sell an asset it already owns in order to lease it back. It has been possible to structure these arrangements so that the capital allowances the lessee claims are greater than the amount brought into account as the disposal value on the sale to the lessor. This is to be prevented.

Income Shifting

In the current economic climate, the Government has decided to defer taking any action and will not bring forward legislation in the Finance Bill 2009. It will, however, keep the issue under review.

Changes to the Standard Rate of VAT

The standard rate of VAT has been reduced from 17.5% to 15% from 1 December 2008. It will remain at 15% until 1 January 2010, when it will revert to 17.5%.

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Guernsey publishes new Companies law



Mark Lamb

Companies (Guernsey) Law 2008

On 1 July 2008 updated companies legislation came into force in Guernsey, entitled The Companies (Guernsey) Law, 2008. At the same time, Guernsey introduced a new online Companies Registry.

The purpose of the new legislation has been to bring Guernsey company law into line with developments elsewhere in the world, including the United Kingdom.

The Law - main features:

- The new Registry replaces the previous process of incorporation which had to be done through the Court. It is now possible to incorporate a new company within 24 hours. All existing Guernsey companies are required to re-register with the new Registry, so that all are on the online system.
- This process is carried out on behalf of companies by regulated company formation agents, named Corporate Service Providers (CSPs), who hold a licence from the Guernsey Financial Services Commission (GFSC).
- As in the UK, companies can adopt a standard set of articles. They are deemed to have unlimited objects unless they elect specifically to limit them.
- Companies may change their name by special resolution, without the need to apply to the Court.
- It is now possible to have a single-member company.
- Authorised share capital has been abolished.
- Shadow directors are now defined,

and certain provisions apply to them as to directors.

- Members of small companies other than companies regulated by the GFSC may pass a resolution not to have an annual general meeting and to be exempt from audit. The thresholds for small companies have been brought into line with those in the UK. (See below)
- Consideration on the issue of shares is paid into a single share capital account, and there is no longer any need to maintain a separate share premium account. Redeemable shares may now be issued as ordinary shares as well as preference shares.
- The concept of capital maintenance has been abolished and replaced with a solvency test.
- There are no longer restrictions on paying dividends only from profits available for the purpose. Dividends may be paid out of income or capital, subject to the directors being satisfied that the company meets the solvency test at the time of the transaction. A company will be deemed to be solvent if it is able to pay its debts as they become due and the value of the company's assets is greater than its liabilities. In the case of a regulated company, any financial resources requirements of the GFSC must also be satisfied.

The Companies (Audit Exemption) Regulations, 2008

To enable a company registered in Guernsey to be exempt from audit, a waiver resolution needs to be passed

under section 256 of the Law. Only companies which are deemed to be small qualify.

A company is a large company if -

- (a) any two of the qualifying conditions set out in paragraph 1 below, are met in a financial year and in the preceding financial year, and
- (b) the company does not fall into any of the classes of company set out in paragraph 2.

Paragraph 1: The qualifying conditions are -

- (a) the company has an annual net turnover of £6.5 million or greater,
- (b) the company has a net balance sheet of £3.26 million or greater,
- (c) the company has an average number of employees of 50 or more.

Paragraph 2: The following classes of company are not large companies regardless of whether they otherwise meet the qualifying conditions set out in Paragraph 1 -

- (a) dormant companies within the meaning of Schedule 2 to the Companies (Guernsey) Law, 1994, as amended,
- (b) asset holding companies within the meaning of Schedule 2;
- (c) companies with 10 or fewer members.

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MBO of Thames Valley based Digital Media Solutions Company



Jason Metcalf

Jason Metcalf and Debbie Clarke of CV Capital LLP have completed the management buy-out, for Jo Fone, Managing Director and Richard Dearing, Operations Director, of CD Team Limited (for further information see www.cdteam.co.uk). CD Team, has been a long standing client of Thames Valley Partner, Ian B Johnson, who worked with the company over a number of years to prepare the business for a sale. CD Team have been providing professional CD, DVD and Blu-ray disc duplication services and equipment to blue chip clients for over 12 years. During this time they have built up a reputation for quality and reliability.

The CV Capital team worked closely with vendors and the CD Team management team over a period of 5 months to structure their business plan and financial forecasts, assist Jo and Richard in raising debt finance and structuring the management buy-out.



Team (left to right): Richard Dearing (CD Team), Naomi Tudor (Martineau Johnson), Stuart Gotabed (Unity Bank), Clive Wilkinson (Vendor), Jason Metcalf (CV Capital LLP), Maggie Wilkinson (Vendor), Jo Fone (CD Team).



CV Capital introduced the management team to a number of banks and after a tender process Unity Trust Bank's offer was accepted by the management team.

Jo Fone, Managing Director, comments "I would not hesitate in recommending CV Capital, their professional service ensured our MBO was successful. With their guidance we have put together a robust business plan and are confident of achieving our targetted growth."

Jason Metcalf, Managing Partner of CV Capital, notes that "We

were delighted to be able to help the Jo and Richard in securing this management buy-out. It goes to show that with a strong management team and a compelling business proposition banks are still open for business despite the current market conditions."

For further information on this and other transactions which CV Capital have completed please contact:

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This briefing has been written for the general interest of our clients and contacts. It is essential to take advice on specific issues. We believe that the facts are correct as at January 2009 but there may be certain errors or omissions for which we cannot be held responsible.

The opinions expressed in guest articles are those of the respective contributors and their firms. We believe that these should be of interest to our clients and contacts but the articles do not necessarily represent the views of Chantrey Vellacott DFK LLP.

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