

# Tax Update

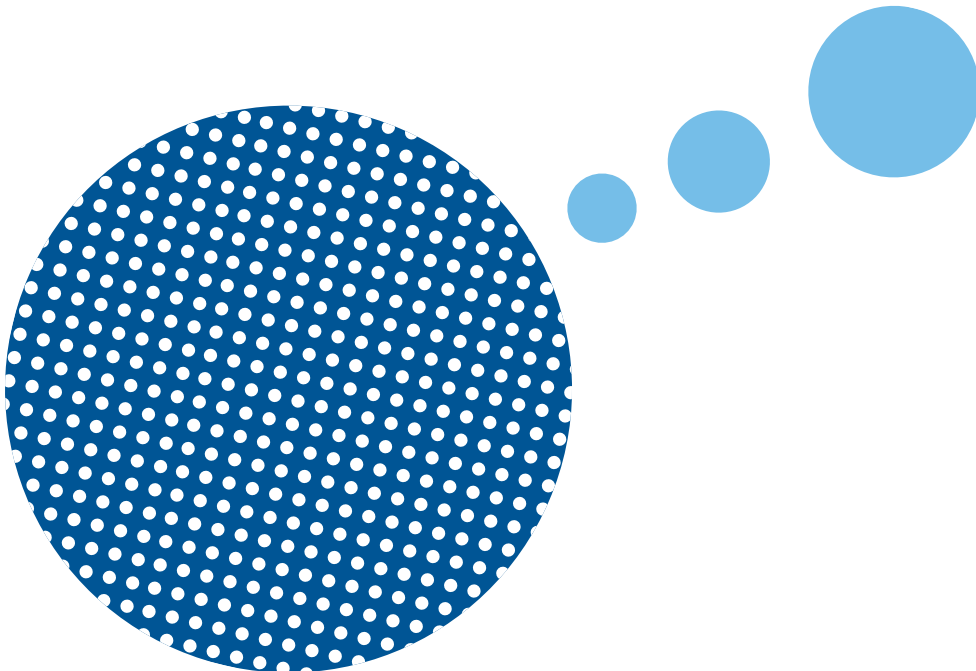
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Our summary of the latest tax issues

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## Are your capital expenditure plans in good shape?

April 2012 may seem a long way off, but in terms of business capital expenditure it may already be time to start planning. Currently you can claim up to £100,000 of the Annual Investment Allowance on plant and machinery expenditure, whereas if you miss the April 2012 deadline only £25,000 will be available. The balance of the expenditure will also have to be written-off at 18% or possibly 8% pa if it is an integral asset within your premises. Instead of 100% relief in year one you could find yourself drip feeding the relief over 30 years or more.



## VAT Update

This edition of your VAT update includes issues arising from Tribunal and Court decisions, new legislation and guidance from HMRC and a heads-up on the latest investigations by HMRC.

### Catering

If you sell hot take-away food and have been accounting for standard-rate VAT, you may discover that it is in fact zero-rated and you are able to claim back the overpaid VAT. That is the implication of a recent European Court decision concerning a Mr Bog who sold hot sausages, which the German tax authorities classified as 'catering' and therefore subject to German VAT at 19%. The European Court held, however, that the service element (the cooking) was not sufficient to predominate or change the nature of the product from 'food' to 'catering' and therefore the hot sausages attracted the lower rate of VAT. HMRC have already stated they will resist such claims in the UK, but if you wish to review your sales of hot take-away food and discuss the prospects for claiming your VAT back, contact the Campbell Dallas VAT department.

### Supply splitting

HMRC are introducing new legislation that will trigger VAT charges when sales are deemed to have been split into standard and zero-rated elements in order to save VAT. If you sell standard and zero-rated items that could be sold together you should review your VAT position to ensure you are safe from this new legislation which HMRC will undoubtedly apply aggressively.

### Prepare for a new style of VAT inspection

HMRC will now interrogate you to establish your past behaviour. We have highlighted in previous VAT updates that the new penalty rules for mistakes on VAT returns look at whether the taxpayer took reasonable care or whether the error was careless or deliberate. As a result, HMRC must now investigate a taxpayer's behaviour at the time the error occurred if they wish to impose a penalty, so

inspections could now feel more like interrogations or formal interviews. We suspect they will offer carrots in the form of reduced or suspended penalties for an admission of carelessness with disclosure and cooperation, but we do not yet know how officers will apply this during inspections. There will inevitably be a great deal of inconsistency in how different officers apply the new rules or how they conduct the investigation. If you would like further advice or a review of your VAT affairs, talk to your usual Campbell Dallas partner.

### Temporary staff agencies

If you make use of agency staff, you may have been over-charged VAT. The First Tier Tribunal has found in a case involving Reed Employment that the agency was only required to charge VAT on the commission element of its services, not on the salary cost of the individuals in question. If you believe you may have paid too much VAT to your staff agency and were unable to reclaim it from HMRC, contact us and we will be pleased to review your circumstances and advise on the prospect of seeking a VAT refund from the agency.

### Admission charges

For services relating to cultural, artistic, sporting, scientific, educational and entertainment activities, VAT used to be payable in the country in which the event took place. From 1 January 2011, such services were included within the new EU rules for cross-border services and, apart from admission charges, are now free of VAT when provided to a business customer in another EU member state. Admission charges are, however, still subject to VAT where the event takes place and you may still be required to obtain a VAT number in another EU member state. We will be pleased to review your situation if you think you may be affected by this.

### Debt collection

Debt collection services have always been excluded from the VAT exemption available for many financial services such as those provided by banks, financial intermediaries and brokers, for example, and are subject

to VAT as a result. Following a recent case involving a dental insurance plan, the scope of debt collection services was widened considerably to include many types of routine payment processing services which used to be exempt from VAT. HMRC will be looking to collect additional VAT from affected businesses, so if you provide any exempt financial services that may fall into this category get in touch with the Campbell Dallas VAT department and we will be pleased to review your circumstances accordingly.

### VAT on entertainment costs

Following a European VAT case last year, HMRC have had to change their policy on blocking VAT on all entertainment costs. This has not been fully appreciated by the business sector and so we advise all of our clients again to investigate their records for possible VAT claims. In brief, VAT incurred on entertaining overseas and potential





## Using your own car for business travel

For many years HMRC have set standard mileage rates which employees and directors can claim without giving rise to any tax charges. They are intended to reflect the actual cost to the employee of using their own car on business, by taking account of fuel use, depreciation and other expenses such as insurance and servicing.

Following the recent escalation of fuel prices, the rates were increased to 45p per mile for the first 10,000 miles, and 25p per mile for anything over 10,000 miles (in a tax year) as of 6 April 2011.

If you have, therefore, been claiming mileage allowances at the old rate (40p per mile) you are now entitled to claim at 45p. Either your employer can increase the rate paid to you (backdated to 6 April 2011) or, if your employer pays you less than 45p per mile, you can claim tax relief in your tax return on the excess.

For example, if you were to use your own car for 1,000 business miles and your employer continued to pay you 40p per mile, ie. £400, the approved amount is £450 (1,000 times 45p). You can then claim the shortfall of £50 on your tax return.

However, if your employer pays you more than the approved amount, you will have to pay tax on the extra.

### Points to watch:

- 1 Travel between your home and your normal place of work is NOT generally regarded as business travel.
- 2 HMRC can ask to see evidence of your business travel in support of your claim. If it is not satisfactory, all of the allowances paid to you could be taxed. We would recommend that you keep a detailed record of dates, place visited, and the person or customer visited.

overseas customers can now be reclaimed (please note that this does not include suppliers, only customers) and the input VAT that was blocked in the past four years can also be reclaimed. Claims for less than £10,000 can be entered on your next VAT return, but you must ensure that the entertainment had a business purpose to avoid a challenge. We can help in reviewing your past VAT claims for this or any other possibilities that may have been overlooked.

For further information or advice please contact Veronica Donnelly by phone on 0141 886 6644 or via email on [veronica.donnelly@campbelldallas.co.uk](mailto:veronica.donnelly@campbelldallas.co.uk).





## New pension: burden or benefit?

NEST - or National Employment Savings Trust - starts next year. As this 2008 legislation is a potential elephant in the room, we are reminding employers early as for some it could become a significant extra cost over the coming years.

NEST is a compulsory employer pension scheme being phased in from 2012; not a tax, but it may feel like one for both employers and employees. Unlike National Insurance, which pays current pensioners out of current employees' contributions (which has been described by some as the biggest Ponzi scheme of all), contributions will belong in an individual's own fund. An employer will need to provide a NEST scheme if they do not already provide an equivalent pension scheme. Full details of NEST can be found at [www.nestpensions.org.uk](http://www.nestpensions.org.uk).

NEST will be phased in between October 2012 and 2017. It will be compulsory to register any employee earning more than £7,475 (at current rates) who is aged between 22 and State Pension Age or 65. However, within a limited window employees can opt out if they choose, in which case neither party need make contributions. Both employer and employee will need to pay minimum contributions at the rates shown below, expected to be on earnings between the Earnings Threshold and Upper Earnings Limit (currently £7,225 and £42,475 respectively). But the time when employers need to comply depends on the size of their workforce. The workforce threshold for joining will be reduced monthly from October 2012, but as a rough guide it will be as follows for existing employers:

Date	Affects current workforces sized	Employer contribution	Employee contribution
October 2012	120,000 +	1%	1%
April 2013	6,000 +		
October 2013	800 +		
February 2014	250 +		
March 2014 to February 2016	Remainder		
October 2016 - rate change		2%	3%
October 2017 - rate change		3%	5%

More details of these 'staging dates' are available at [www.dwp.gov.uk/docs/staging-datesby-employer.pdf](http://www.dwp.gov.uk/docs/staging-datesby-employer.pdf), but the Regulator will contact relevant employers nearer the time. If you require advice or assistance before NEST begins, please contact your usual Campbell Dallas partner.

## Tax and VAT Amnesties

The proliferation of disclosure regimes announced over the last year or so is marked by the recent (31 May 2011) closure of the Plumbers Tax Safe Plan (PTSP). Despite its name, the regime was organised so that plumbers reported to one tax district whilst any other taxpayers wishing to make a disclosure could report to another.

The PTSP's attractive incentives of low penalties and potential exemption from prosecution have been overshadowed by HMRC's recently announced plan to target certain business groups, starting with restaurants and pubs. Others will no doubt follow close on their heels.

With the current requirement for company tax returns and accounts to be filed in iXBRL format, HMRC can now analyse business results and draw comparisons with ease. Only the optimistic will not recognise that this can ultimately result in many more enquiries being launched, meaning, of course, that the penalties will end up being much higher.

Curiously the amnesties previously announced covered areas where HMRC already had a great deal of information: bank accounts, targets of the original disclosure regime, and trade/ business association memberships. However, HMRC perceived that it was more cost efficient to encourage taxpayers to make voluntary disclosures than pursue the multitude of cases with teams of investigators.

Although several disclosure regimes have now closed, it is not too late for you or someone you know to come clean and avoid penalties as high as 200%, in addition to the outstanding tax, and interest thereon.

**Please contact your usual Campbell Dallas partner if you or they need assistance.**

## Make good use of PAYE thresholds

With so many Budgets in the last year, you may have lost track of tax and National Insurance (NI) thresholds. For an owner managed business, whether you are a company director with your own salary or self-employed and paying a wage to your spouse, you should consider whether you are paying a salary that makes maximum use of these thresholds. At the same time you should ensure that NI contribution records will be franked each year, whilst getting a tax deduction against profits. Many owners will be paying a relatively low salary (particularly within companies), but as the thresholds jumped up somewhat from 6 April 2011 you could now be missing out if you do not review these. The annual thresholds are now:

- **Personal tax allowance**  
£7,475 (was £6,475 up to 5 April 2011)
- **Starting point for NI (employee)**  
£7,225 (was £5,715)
- **Starting point for NI (employer)**  
£7,072 (was £5,715)
- **Starting point for franking NI record**  
£5,304 (was £5,044)

So from 6 April 2011 the most you could ordinarily pay without incurring any tax or NI cost at all would be £7,072 over the year i.e. before employer's NI contributions bite (though some individuals may have a personal tax allowance lower than even this). Assuming the hours or skill involved warrants it, you should consider paying at least £5,304 to make sure that an individual's NI record is stamped for the year and reported on an annual employer's return form P35. Franking an NI record can aid future entitlement to both the Basic and State Second Pensions for an employee. Bear in mind that different thresholds apply to whether you pay monthly or weekly, and for state pension planning you should also consider any additional entitlements already in place, such as Home Responsibilities Protection for a parent.

Contact your usual Campbell Dallas partner for further advice on tax and national insurance.

## Is your company still associated?

New rules have recently come into force affecting the interpretation of companies that are associated with one another.

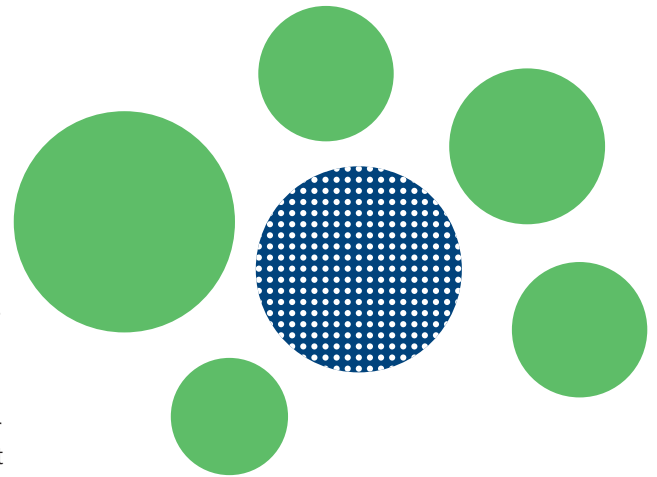
Previously, companies held 100% by one spouse would be automatically associated with companies controlled by the other spouse. However, you can now look to commercial interdependence, or rather the lack of it, to argue that two companies owned by a husband and wife, or other connected parties, are not now under common control.

The most obvious effect of being associated is that a company is at greater risk of being charged the full rate of corporation tax even where its profits are below £300k. Similarly, as a result of being associated, the companies will advance to the point at which they are liable to pay tax in quarterly instalments. Amongst other consequences transactions between associated companies will typically be adjusted to market rates, whereas transactions with unconnected companies will follow the value of the transaction struck between them.

In determining whether a substantial commercial interdependence exists it is necessary to take into account the degree to which the companies are financially, economically, or organisationally interdependent. Failing any of the following tests could cause companies to be interdependent.

Companies are financially interdependent if:

- One gives financial support directly or indirectly to the other; or
- Each has a financial interest in the affairs of the same business.



They will be economically interdependent if:

- They seek to realise the same economic objective (eg. both are hairdressers);
- The activities of one benefits the other (eg. one supplies services or goods to the other, or both supply an integrated service to a third party such as IT hardware and software); or
- The companies have common customers (eg. a pub and a restaurant).

Two companies will be organisationally interdependent if they have common:

- Management
- Employees
- Premises
- Equipment

To find out whether your company is associated please contact your usual Campbell Dallas partner.

# Are you resident in the UK or not?

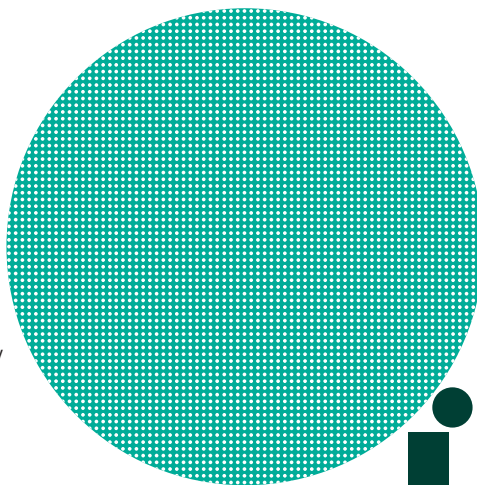
Recent developments are affecting those moving to and those leaving the UK. Individuals who are physically present in the UK often try to argue they are not UK tax resident, whilst those outside the UK will often find they still remain UK tax resident.

## UK resident

There was recently a case whereby an Austrian banker tried to claim that he was not ordinarily resident in the UK as it affected whether he was taxable on overseas earnings. When he originally arrived in the UK he reported his intention to stay for only 2.5 years and took rented accommodation. However, his circumstances changed and whilst his mobility was demonstrated by a change of employer he bought a London property and moved his girlfriend (whom he subsequently married) to live with him. She also took up a training contract in London. Both the Tribunal and the Upper Tribunal held that he was ordinarily resident from the year in which he had a settled purpose in the UK, ie. When he bought a house and set up home with his wife.

## Living outside of the UK

If you are seeking to work abroad you might assume it entails losing UK tax residence; however, that will not always be the case. HMRC have recently updated their guidance regarding full time working abroad, which is one of the means by which some can cease to be UK tax resident. This can either be under a contract with a foreign employer or a formal secondment to a non-UK location by a UK employer. Nevertheless, you must be able to demonstrate that you are working the equivalent hours of a full-time employed citizen of the country concerned, who is of the same level and in the same line of business as you. This is expected to be a minimum of 35 hours per week. To be certain of a clean break, ideally you should not return to the UK within the first fiscal year. Visits while you are working full time abroad, which do not adversely affect the above criteria, may be acceptable. However, it is likely that they need to be only for a short duration, probably within your annual leave, or possibly for exceptional circumstances.



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