



Law of Domicile - it's time to talk



From a business and personal perspective, 2008 has already unveiled a range of draft tax legislation likely to impact on the tax positions of many of our clients. Perhaps the most pressing issue is the changes to the UK's Non Domicile rules. We have written to our clients and contacts on this subject and further copies of that advice are available on our website. We continue to review each client's individual position to give specific advice.

Tax planning has a role to play in the most unlikely circumstances. We have recently advised on the purchase of furniture, and while we aren't expecting to accompany clients on weekend trips to IKEA, when the item in question carries a £1 million plus price tag, then it makes real sense to seek our advice.

The key point is that we are here to help, whatever the challenge.

Tony Flanagan

Entrepreneurs Tax Relief

A new capital gains tax relief for entrepreneurs was announced by the Chancellor of the Exchequer in January.

Entrepreneurs' relief will be available to owners of small businesses, when they sell their business. It will also be available to all employees and company directors who invest a material stake in a qualifying company, which will be a minimum of 5% of the voting share capital of the company.

The relief began as of on 6 April 2008.

The relief will be:-

- A 10 per cent tax rate for up to the first £1 million of lifetime capital gains
- Claims can be made on multiple occasions up to a cumulative total of £1 million
- Gains in excess of the £1 million lifetime limit will be taxed at the new standard rate of 18%.

As always the devil is in the details, we await the draft legislation.

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Marine Expertise in Demand

Wilton Marine is finding steady interest for advice on taxation and other issues surrounding yacht ownership. We are currently assisting with the purchase of a luxury yacht to be built in Holland. We assist clients with all aspects of yacht ownership, registration, estate planning, administration, finance and insurance. For more information, please contact **Jon Elphick** or **Mike Fish** on +44 (0)207 355 35 25 or **Andrew Kelly** at our **Isle of Man** offices on +44 (0) 1624 675610.

Maintaining the nautical theme, WiltonGroup was recently appointed by an international ship chartering company specialising in deep sea chartering, using their own vessels to assist with a re-structuring of their business to mitigate risks inherent in the application of American maritime attachment orders under 'Rule B'.

This can cause significant disruption to business especially where bank accounts can be frozen on an 'ex parte' basis i.e. without the defendant's knowledge.



TRANSFER PRICING

WiltonGroup's Martin McNally advises on the "radical new approach" announced by HMRC

Transfer Pricing Legislation was introduced into UK tax legislation before Corporation Tax Self Assessment was introduced but has now been modernised to bring transfer pricing within CTSA.

The legislation is widely drawn and aims to catch any series or type of arrangements, understandings or mutual practices involving connected parties. Companies should not only consider whether the price paid for a service or product is too high but also whether income has been undervalued or perhaps not even recognised. For example, appropriate tax return adjustments would have to be made where one company guaranteed the borrowings of a connected company where no arms length charge is made as a guarantee fee. There are numerous other examples of transactions which will be affected by transfer pricing considerations, including:

- Companies which are thinly capitalised when taking interest cover and shareholders funds into consideration and interest charges are to other group companies.
- Companies which have amounts owing to them from other group companies on interest free terms.
- Companies which provide services to other group companies in circumstances where an arms length charge is not made.

This might include, in certain cases, the provision of shares or options to employees of group companies. All transactions between connected parties should be reviewed including debt levels; interest; rents; royalties; management charges as well as transactions in physical goods and the provision of services. The companies are required to compile and retain documentary records justifying the prices used. Please be warned that failure to comply can result in penalties.

HM Revenue & Customs states that the documentation should include:

- A record of the commercial or financial transactions affected;

- The nature, terms (e.g. prices) and quantum involved;
- The method by which the above were arrived at, including a study of comparables;
- Evidence of how the method has resulted in arms length terms, and
- Contemporaneous commercial agreements (e.g. distribution agreements and loan agreements), any budgets and forecasts or other information relied upon.

The key point in the above is the requirement to demonstrate evidence of proof that the transactions are indeed at arms length – the basis of a reasonable calculation alone is not sufficient to meet HM Revenue & Customs requirements.

There are a number of ways in which this can be demonstrated but it will always entail an exercise in comparability with third parties, normally using the OECD guidelines. Please note also that the term 'connected' parties does not only relate to corporations under common control but also where two or more persons act in concert to control ownership. It also applies to joint ventures where two parties each control at least 40% of the joint venture.

If a transaction has taken place on a non-arms length basis, resulting in understated income or overstated deduction, a transfer pricing adjustment must be made in the corporation tax return. The adjustment must be to increase profits or reduce losses to reflect the arms length principle.

The other party will generally claim a corresponding adjustment but this will not necessarily equate to a neutral result for both companies together. For example, a company making the transfer pricing adjustment may have an increased tax liability whilst the company claiming the compensating adjustment may have tax losses and therefore not be able to obtain an immediate tax benefit.

A recent survey of multinational companies shows that 52% have had their

transfer pricing policy examined by tax authorities in the last four years and 78% expect such an inspection in the next two years.

As a result of recent inspections, 27% have had their accounts adjusted by the tax authorities and 15% have had a penalty imposed. Almost all now regard transfer pricing as an issue in managing financial statement risk.

WiltonGroup has prepared transfer pricing documentation for a number of multi-national groups and is currently engaged in assisting two international organisations to ensure that their transfer pricing policies and documentation are compliant.

Our expertise is available to help you in this complex area of taxation and there is absolutely no doubt that this will become more of an issue as tax authorities pay more attention to it.

In January 2008, HM Revenue & Customs announced that it is launching a 'radical' new approach to the way it deals with transfer pricing and is now appointing transfer pricing specialists and providing additional training to strengthen skills in this area.

You have been warned! We urge you not to disregard this aspect of taxation even though it may be complex and time consuming to ensure compliance.

Martin McNally

FSA COMPLIANCE

WiltonGroup carries out FSA compliance work on behalf of a number of clients and have recently made a successful application for a Variation of Permissions on behalf of an international listed company to upgrade their FSA license. In order to continue with the expansion of their business, we are now applying on their behalf to passport their services throughout the EU and to establish branches in a number of other EU countries. If you require any assistance with FSA compliance please contact **Martin McNally**.

NEW CAPITAL GAINS RULES – EMPLOYEE SHARE SCHEMES

The change to the Capital Gains Tax regime is one of the key measures set out in the Finance Bill.

Taper relief to mitigate any capital gains has been abolished and there will be a new flat rate of CGT of 18 percent, which will apply to any asset regardless of how long it has been held. Indexation allowance the precursor to taper relief will also be abolished. The CGT annual exemption will remain.

Unapproved Schemes

Generally, UK employees pay income tax and national insurance on the 'gain' that is the difference on the exercise/vesting of a share option or share award (i.e., the difference between the market value of the shares at the date of exercise/vesting and the price, if any, the employee pays for the shares). When the shares are sold, CGT is generally payable to the extent that the shares have increased in value from the date of acquisition. Special rules apply to HM Revenue and Customs approved share option schemes.

- Employees with unapproved share options who sell their shares straight away after exercise/vesting should not be affected as they will continue to pay income tax rather than CGT

Approved Schemes

With Company Share Option Plan (CSOP), Save As You Earn (SAYE), or Enterprise Management Incentive (EMI) plan, there is frequently no income tax charge when an option is exercised. Instead, CGT is payable when the shares are sold by reference to the difference between the market value of the shares on the date of sale and the option exercise price.

- Employees with low levels of options/awards will generally have any CGT charge covered by the annual exemption (currently £9,500).
- Employees with HMRC approved share options who plan to exercise options and sell shares straight away (e.g., to fund the exercise price) will be better off as the tax will be due at a flat rate of 18% rather than 40% for a higher rate taxpayer. There will be no CGT advantage in retaining shares.
- Participants in HMRC approved Share Incentive Plans (SIPs) will remain subject to the special tax rules applying to SIPs and should only be affected by the change to the CGT rate if they withdraw shares from a SIP trust and hold on to the shares for a period of time before selling them.



These changes have also altered the balance between different forms of share incentive plans. For example, although it will still be beneficial to use an EMI plan rather than a CSOP given the higher individual limits (£120,000 v £30,000), the advantages will be less significant than before given that both qualifying CSOP and EMI options will now be taxed at 18 percent on any capital gain

It will therefore be important to review all arrangements to ensure that the best possible planning for employers and employees.

New Capital Gains Rules - Employee Share Schemes reviewed by WiltonGroup's Aidan Adair

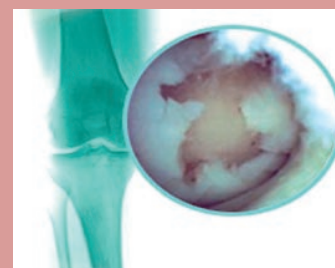
CellCoTec limited

Our client, CellCoTec Limited, is raising £7.5m of new equity through a private placement. The offering is at £6.32 per share which values the company at £7.75m before fund raising. We provide taxation, accounting and company secretarial services. Oakes Lyman (www.oakeslyman.com) is retained as advisor and placement agent to the company.

The company has attracted an outstanding management team and is developing a breakthrough solution for the surgical repair of

knee cartilage damage, a condition that if left untreated frequently leads to painful osteo-arthritis, and at a later age, the need for an artificial knee. Funds will be used primarily to complete a "proof of concept" human clinical trial and to design and prototype the medical device that should allow the orthopaedic surgeon to complete the procedure within an hour. Once proof of concept is completed, further capital will be raised to take the product through the regulatory process and to a commercial offering.

If you wish to find out any more information about CellCoTec Limited, then please contact their Chief Executive, **Lawrence Kinet** on **07720 425787**, or **Herbie Oakes** of Oakes Lyman on **020 7355 5200**. You could also visit CellCoTec's website at **www.cellcotec.com**.



Attention to detail creates stunning homes

WiltonGroup client Nigel Rankine entered property development through unusual circumstances. An investment banker until his redundancy closely following the September 11 disaster, Nigel decided to make a bold move after a property development project involving his own house and that of his neighbours went sour. Nigel bought the properties and together with a friend and now business colleague, refurbished the properties and then went on to build three new houses in the rear gardens.



So began Mayflower Developments which now undertakes luxury home development with properties ranging from £3 to £40 million and rapidly acquiring a reputation as a creator of outstanding homes. From luxury houses in and around the Home Counties to an outstanding art deco development at Sandbanks, Dorset, Nigel is absolutely insistent that only the best is good enough at every stage of the project. From the basic materials to the finishing touches, attention to detail is the company's watchword.

"We want to create homes that are practical as well as stylish," says Nigel. "That means checking that the bricks will not ooze salt in wet weather and that the mortar is consistent so the brickwork never looks patchy. It means coordinating the finishes of doors, kitchens, stairs and an evolutionary appreciation of latest technology in lighting, security and audio/visual systems; all without getting carried away."

Nigel's career move has led to real job satisfaction. "I personally love helping create quality homes for 21st century families and I have a great team to help achieve the right results. Nigel's advice to ideal home hunters..... "Make a list of the things you like and dislike about your current home and those of your friends so that you can guide the architects and designers as to what are your specific tastes and requirements."

For more information on Mayflower homes and bespoke properties please visit www.mayflowerhomes.co.uk

Invitation to join Callataj & Wouters Ltd at a key business briefing

Callataj & Wouters Ltd, in association with Odyssey, Citisoft and IBM, is organising a Briefing at IBM's South Bank offices in London SE1, on Wednesday 4th June 2008 with special guest speaker Rohitha Perera, Wealth Management Partner IBM Global Business Services.

The Briefing will take place from 4.30pm until 6.00pm followed by drinks and canapés. The central topic is "Changing business models in private banking and wealth management"

It is aimed at senior business wealth managers within financial institutions and will propose a view on market changes, current and future trends in front, middle and back office operations.

The purpose of the Briefing is to discuss the rapidly changing private banking landscape and how operational, business and regulatory risk can be reduced.

If you are interested in attending and would like details of the programme, please visit <http://www.callataj-wouters.com/com/en/event080604.htm>

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BANKING SOLUTIONS

MAJOR CHANGES PROPOSED FOR NON-DOMICILE TAXATION

HM Revenue & Customs has recently published the Finance Bill, detailing the proposed legislation changes for taxing UK residents who are deemed to be non-domiciled in the UK. The final proposals are not as wide-ranging as previously feared, with Alistair Darling backing down on a number of the "Draconian" measures originally announced in the Pre Budget speech last year. The changes will still have a significant impact on Non Domicile individuals and Non Domicile beneficiaries and settlors of offshore trusts.

The main proposals are:-

- Non Domiciles who have been in the UK for less than seven years will largely be unaffected by the proposed changes;
- Non Domiciles who have been tax resident in the UK for 7 or more tax years (in a continuous 10 year period) will be required to pay £30,000 a year to continue using the Remittance Basis rules;
- Non Domiciles will not be able to remit Capital Gains made by Trusts after 5 April 2008 without paying UK tax. Realised and unrealised gains made by Trusts before 5 April 2008 may, in certain situations, still be remitted to the UK free from tax;
- Bringing non cash items to the UK (motor vehicles, jewellery, etc.) will be treated as remitting income after 5 April 2008, where they were bought with non UK taxed income and capital gains. Items already bought out of the UK which are used in the UK may also be subject to "retrospective" UK taxation

To discuss how these changes may impact on your personal situation, please contact your WiltonGroup advisor as soon as possible.

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