

2007

# SPRING NEWS



## Avalon Accounting

Chartered Accountants Registered Auditors



### The long goodbye

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Will Gordon Brown sign off with a flourish, producing some fireworks for his final Budget? Or will he have his eyes already fixed on the wider issues of the office next door, and leave the next set of changes to his successor? And who will that successor be? Or will Mr Blair change his mind and try to stay? Whatever happens it seems certain that the Chancellor will change this year.

Whether you think Mr Brown has been good at his job probably depends on your political leaning. He has certainly made some very significant changes. Whether or not you agree with the opposition's count of "stealth taxes" that he is supposed to have introduced, some areas of tax seem to have grown even more complicated while he has been in charge.

He has certainly made some big changes: one of the biggest, the merger of the Inland Revenue and Customs & Excise into a new department, is probably too new to tell whether it will prove to be a good thing or not. It will be strange to see someone else running the country's finances. Whoever it is, we will be keeping you informed about tax changes and how they affect you. ●

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### Second homes

The property market has been the source of big profits in recent years. Gains on your "only or main residence" are not charged to tax (unless you use part of it exclusively for a business purpose), but a second home or an investment property are chargeable.

If you actually use more than one property as a residence, you can choose which one you want to be exempt from CGT. Although this might be the one that you live in most of the time, you are likely to obtain an advantage – and give yourself greater flexibility in the future – if you make an "election" within two years of acquiring the second home. For example, if you decide to sell the second home first, or if the gain on it is larger than the

gain on your main home, it might be useful for it to be exempt.

You can only elect for a "residence" to be exempt, not an investment property that is let out to others. So a "buy-to-let" property is chargeable to CGT, and receives the lower rate of taper relief. But if you are letting out a property that you have lived in, or you move to live in a property that you have let out, you can enjoy significant extra reliefs.

If you want to know how the CGT rules on residences apply to you, and how you can make best use of them, we will be happy to help. ●



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## Plastic costs

Do you remember the scheme that was supposed to save VAT for high street stores? You thought you had bought some goods for £100, but if you looked closely at your credit card slip, it said that the price of the goods had been reduced to £97.50 and the other £2.50 was for a VAT-exempt “card handling charge”. Back in 2005 the Court of Appeal ruled that Debenhams’ version of this didn’t work – there was no genuine separate card handling service where the overall price remained the same. Customs are still chasing up all the other shops that used it.

Last year a different scheme was held to work – the company that handles telephone bookings for Odeon Cinemas did make a VAT-exempt charge of 50p, crucially because it was added to the basic cost of the ticket. Customs thought it was for “booking” (VATable), but the House of Lords ruled it was for “handling payment” (not VATable). So the customer might pay £7.50, and the VAT was only calculated on £7.

Customs have made an announcement to try to limit the effect of this. They say that it was crucial to this case that the company supplied a service of transmitting card information and payment authorisation codes to the bank for settlement. It wasn’t just about making an extra charge because it costs the business money to accept payments by credit card. It’s quite common now for businesses to add a bit extra to cover the card company’s commission – Customs say that’s just a price increase on the basic supply and it’s all VATable, unless you are doing the transmission service as well.

Until someone argues with that, it’s probably worth following what they say. So you can charge a bit extra for accepting payment by plastic, but it will all be treated as VATable. ●

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## Partner shock

If you are a partner, you know that you are eligible to share in the profits of the business – and also in its losses and debts. A recent case may come as a shock to those people who hold the in-between status of “salaried partner” – you don’t get a profit share but a fixed amount, so it seems unfair to lumber you with the losses.

A solicitor wanted to set up in practice, but he didn’t have enough experience to satisfy the Law Society unless he was in partnership with someone else. So he signed an agreement with an older solicitor who was paid a fixed amount and appeared on the notepaper, but didn’t have much involvement in running the business.

Later, of course, things went wrong – or we wouldn’t know about

it. One of the firm’s creditors sued the older man for a debt that was unpaid. He argued that he wasn’t a partner because he didn’t share in the profits. No good: the law doesn’t require you to share profit. It says there is a partnership where people “carry on a business in common with a view of profit” – the business was aiming to make a profit, and how they split it up didn’t matter. He was a partner, and he was liable.

It’s important to understand the obligations of partnership. You don’t have to call yourself a partner to be one – if you are running a business with someone else, you may be a partner anyway. ●

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## Payback time

We’ve had Child Tax Credits (CTC) and Working Tax Credits (WTC) since 2003. To claim, you file a long complex form which the Revenue have trouble processing. The system has had a terrible press, with many claimants finding that they have received too much and the Revenue want the money back. Committees of MPs have been very critical about the problems this has caused. If they get the system working better – a big “if” – it’s still worth thinking about making a claim, particularly if you are a couple where both of you work and you therefore pay childcare costs.

The basic CTC (about £10 a week) is payable to a couple with a qualifying child and combined income of up to £50,000. Above that, it reduces to nothing by the time total income is about £58,000. The form may be longer and more complicated than seems reasonable (when the Revenue already have a lot of the information on the tax return), but £545 a year probably pays for the effort. WTC will pay up to 80% of £300 a week in childcare costs, so it can be quite generous even on combined incomes above £30,000.

It’s worth looking into, particularly if you can’t predict your income at the beginning of the year. To start with, a claim is based on last year’s income – 2006/07 for the 2007/08 payment year – and it’s then revised at the end of the year based on actual income. If you make a claim at the beginning of 2007/08 based on 2006/07 income of £100,000, your claim will be noted but you will receive nothing. If by the end of the year your income has fallen to £30,000 for some reason, you would get the higher level of payment – maybe £3,000 – backdated to the beginning of the year. If you only bother to claim at the end of the year when you know your income is low enough, you only qualify for payment from three months before you claim.

The Revenue themselves have encouraged people to make a “protective” claim when they won’t qualify immediately, in case they do so later. Until they change the rules, it makes sense to think about a claim even if your past income is above the limit. ●

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## Taxman in a spin

“Carousel fraud” is a major criminal attack on the VAT system. It’s been very successful: we all pay more tax than we need to because the fraudsters are getting away with billions.

Anyone in business should know about it because they may be left holding the bill. A carousel works like this: Dodgy sells goods to Honest for Honest to despatch out of the UK. Dodgy charges VAT on the sale but disappears without paying it to Customs. Honest paid the VAT to Dodgy and claims it back from Customs. Not surprisingly, Customs don’t want to pay.

Customs thought they could refuse just because there was a fraud going on, but last year the European Court ruled that Honest is due the VAT unless he “knew or had the means of knowing” that there was a fraud intended. If you are in the mobile phone or computer chip trade, where most frauds have happened, you need to take “reasonable steps” to be satisfied that your suppliers are on the level. If you meet someone in a pub and they propose a deal that looks too good to be true, it probably isn’t true. Customs may be able to leave you with the VAT cost.

Frauds are now coming up in different sectors. Maybe the Dodgies plan to catch honest traders unawares because you don’t think of carousel fraud when you are dealing in video projectors, golf clubs or – amazingly – sweets. Customs have argued that the goods themselves could not have existed – the transport papers showed that the goods wouldn’t fit in the boxes, or the invoices described goods that the manufacturer had never made. That was bad news for Honest: no goods, no VAT deduction.

If you deal in “carousel-prone” goods, you need to do what you can to be sure that your transactions are genuine. If you deal in other goods, it seems that you still need to be careful as the fraudsters look for new avenues. We will be pleased to advise you on what you can do. ●

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## Car trouble

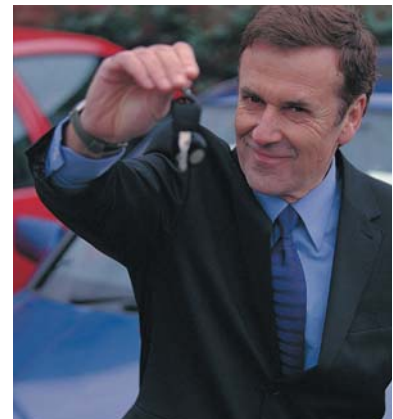
People often claim back the VAT on buying a car, sure that they will only use it for business purposes, and are surprised to find that Customs don’t accept their claim. What’s even more surprising is that Customs are willing to believe that they only drive it on business – they don’t follow you around to see if you are taking the children to school or doing the shopping – but they still win their argument in the VAT Tribunal because of the peculiar way the law is written.

The rules say you can’t claim 100% use if you “intended to make the car available for private use”. If you bought it for 100% business use, making it available for private use (without actually using it privately) almost certainly never occurred to you, and doesn’t seem to make much sense. Even so, the courts almost always say that it is physically available; buying it inevitably makes it physically available; even if you didn’t think about it, you have to be assumed to have intended what would certainly happen as a result of you buying it.

Last year, a company showed that a board resolution saying “this car is not to be available for private use” was good enough (as long as it was true) – the company made it legally unavailable for employees to use

privately. It’s much harder for a sole trader, because you can’t legally tell yourself that you mustn’t use it. A VAT Tribunal allowed a farmer to have the VAT because he bought two identical cars, one for private and one for business use, and surely he wasn’t intending to use the second one privately – but the High Court allowed Customs’ appeal. It was certainly available, even if it wasn’t used.

Customs have also won several cases against companies recently, some of them featuring board resolutions that weren’t worded correctly. If you want to claim back the VAT on a car, we will be pleased to tell you what’s required, and whether you can meet the conditions. ●



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## P@Ye-filing

The Government is keen to get everyone dealing with the Revenue over the internet. The advantage for them is that they just have to employ one person to turn on the computers and we then do all the work – well, almost. They still threaten to check up on us afterwards.

If you are a small business, you won’t be forced to file your year-end PAYE returns over the internet for a few years – but if you sign up early, they will pay you money. The payment has been £250 for the last two years, but falls to £150 for the

2006/07 return. £150 is not bad if your returns are fairly straightforward – if you only have a few employees, it’s simple enough to complete the forms using the Revenue’s own website. The incentive payment is even tax-free.

You have to be registered for the e-service in advance, so if you are interested, you need to log on to [www.hmrc.gov.uk](http://www.hmrc.gov.uk) and follow the links to Online PAYE services. We will be pleased to help with PAYE obligations, whether new-fangled or old-fashioned. ●

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## Rights and wrongs

The European Court of Human Rights has heard three cases about the UK tax system recently. European countries are supposed to be able to set their own income tax rules (while VAT is subject to European law), but those rules are still supposed to be consistent with human rights. They aren't supposed to discriminate between people on the grounds of race or gender, and they aren't supposed to confiscate property in an arbitrary way (some might think that was the definition of a tax, but there are get-outs in the human rights laws for it).

One case has been rumbling on for years: the UK used to give widows a special tax allowance in the year their husband died and the year after, but there was nothing for widowers. Some men claimed compensation for the fact that this was clear gender discrimination. The ECHR agreed that it was discriminatory, but refused to award compensation. The law has now been changed to remove the discrimination anyway – widows get nothing either.

Another case was brought by two sisters who have lived together for many years. They objected to the fact that they will have to pay inheritance tax when the first one dies and leaves her share to the other. If they could be married, or could be a registered gay couple, they would be able to leave property to each other free of IHT. The judges were split on this one – three thought the situation was unfair, but four thought the government was entitled to make a distinction between sisters and married or registered couples.

The third case was brought by a man who objected to paying employee NIC until he was 65, while a woman could stop at 60. The court held that this was reasonable, given the link between contributions, the earning of a pension and the pensionable age. In any case, the UK is trying to remove this discrimination, although it will take a while to do so.

So tax may seem unfair and unreasonable, but that doesn't mean your human rights are being infringed! ●

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## Too many films?



Two recent employment cases suggest that employees have been watching too many thrillers at the cinema. In one, an employee hacked into his employer's computer system in order to demonstrate that it had security problems, then complained that he was dismissed after saying what he had done. This wasn't GCHQ – it was a school. He claimed unfair dismissal as a "whistle-blower" – if you are sacked because you have spilled the beans on some wrong practice in the company, you get compensation. In this case the employer was held to have the right to dismiss him for his own wrong conduct, even if he claimed he was doing it in the best interests of the employer.

The other one is potentially alarming for anyone who sits on disciplinary panels. An employee of another school was dismissed for misconduct. She arranged for a secret recording to be made of the disciplinary panel meeting which discussed her case. Some of the meeting was recorded anyway by the Clerk to the Governors taking minutes; but she wanted to produce the private discussions between the members of the panel in evidence to the Employment Tribunal.

In this case, the Tribunal decided that they would not hear the recordings. However, it did not say that they were ruled out on principle – it was particular problems with what was said to be on these tapes, rather than the business of secret recordings in general. Anyone hearing a disciplinary panel may want to check for bugs, or obtain an undertaking from the participants that they won't record anything. ●

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## Losing the will

It's a good idea to keep your will up-to-date, and also to know where it is. Of course, if you are the only one who knows, that's not much use – when it's needed, you won't be able to say. If no will can be found, your estate will be distributed as if there was no will at all.

A recent case was about a man who had been married three times. He drew up a will in favour of the children of his second marriage, & gave them each a copy. Then he married again, and had more children with his third wife, as well as acquiring some new step-children. When he died, the third wife could not find his will.

The children of the second marriage argued that their copies should be good enough to stand in place of the will. Normally you need the signed original, but the court accepted that the copies were enough. It seemed likely that the original had been lost accidentally – there was no indication that the dead man had destroyed it deliberately with the intention of cancelling it. It was improbable that he would have done away with it and not replaced it.

Is your will up-to-date? Do you know where it is? More importantly, does anyone else know where it is? ●

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## Tip of the day



If you run a restaurant, the tax and VAT treatment of tips is important. Waiting staff should pay tax on tip income, but they don't generally have to pay NIC, as long as a system called a "tronic" is operated by someone other than the management. If the "tronicmaster" collects all the tip money and divvies it up between the staff, it's treated separately from the employer's payroll for NIC, & that saves money.

The Revenue used to take an aggressive line over the rules on keeping the tronic separate from the payroll. All sorts of things were thought to "taint" the tronic and trigger NIC liability on the whole of the money passing through it. They have now moderated their view, and they will accept arrangements that they used to attack. If you have had problems with this in the past, it will be worth looking at it again to see if you can get any money back, or if you can make your arrangements easier to operate. We will be happy to advise you.

One funny rule that always looks wrong, but is accepted by Customs – if your bills describe a service charge as "optional", it isn't included in the takings for VAT purposes. It's treated as a present, even if everyone pays it and even if they put it on the same credit card as the rest of the bill. If you don't say it's optional, anything that you put on the bill is charged to VAT. As long as no more than 17.5% of your customers take advantage of having the choice, you should be ahead! ●

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## Life gets shorter

Well, it looks like working life is getting shorter – at least as far as qualifying for your State pension is concerned. The rules at the moment require men to pay NI contributions for 44 years to earn the full pension, while women need to pay for 39 years.

If you don't pay the minimum level in a year, you may receive a letter from the NIC office in Newcastle offering to credit you with that year if you pay voluntary contributions. At about £400 (current rate) for what seems like a pitiful amount of future State pension, it doesn't look like much of a deal – but it compares well with what you might get by putting your money into a bank, or even in the hands of a private sector pension provider.

But...the rules are changing. The current Pensions Bill proposes to cut the requirement

for both men and women to just 30 years from 2010. You won't be able to get your hands on the money any earlier (and may get a higher pension if you defer starting it), but you won't have to work for so long to qualify. That's a bit frustrating if you've paid some voluntary contributions and now think you didn't need to (you won't get them back) – or if you are going to reach retirement age before 2010, in which case you will still need the full 44 or 39 years.

The link between paying NIC and earning a pension – or other benefits, for that matter – is a complicated one that baffles most people. The clearest point is that you should ask for advice if you get a letter asking for voluntary NIC for a past year – it used to be a good idea to pay, but now it may not be. ●

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## On the job training?

Perhaps the Inland Revenue are having a "special" on training expenses at the moment – there have been three cases in as many months on individuals trying to claim a tax deduction for them, all without success.

One was a psychiatrist working in the NHS who paid £9,000 for her own training because her employer couldn't afford it. If the employer paid, there would be no tax charge on the £9,000 – but because the employer paid her a salary instead and she paid for the training, the salary was taxable with no deduction for the course. Even the Appeal Commissioner commented that this was – well, crazy.

Another was a pilot who left his airline and was required, in accordance with his employment contract, to pay back the cost of training him. There had been no tax charge when his employer paid in the first place, because it was for him to do the job he was working

in – but when he paid it back, there was no way to deduct it from his taxable pay.

The third person was self-employed. It's usually easier for self-employed people to claim training costs because employees are supposed to be actually "doing the job" when they incur an expense – traders can just be "preparing to do the job". In this case, though, the Revenue argued that the course was "capital expenditure" – it led to new skills and a new qualification, rather than just maintaining his existing expertise. The Appeal Commissioners agreed that he could not have a tax deduction for a capital expense.

Training for employees can usually be arranged tax-efficiently, as long as it is something to do with the job. If you have employees who are so keen that they are willing to pay for their own courses, we will be happy to help you save some tax while they train. ●

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## CIS-off

If you are involved in the construction industry, you will surely be familiar with the Construction Industry Scheme which requires tax deductions from many payments made by contractors to sub-contractors. You should also be aware that CIS is changing on 6 April 2007. The new rules were set out as long ago as 2004, but still there are complaints that the Revenue have not given people enough time to prepare for the new system.

The overall idea is to make life easier for contractors and sub-contractors – to remove the need to look at gross payment certificates as long as sub-contractors can be “verified” or have been paid gross in the past two years. But any change of rules comes with many dangers of getting it wrong – in particular, contractors will be required to make monthly returns of payments, including nil returns

where no payments have been made.

There is also a new declaration to be made that none of the payments made to sub-contractors are under a contract of employment. The Revenue say that the declaration means the contractor has to think about it – if you make an honest assessment and it turns out to be wrong, you won't be penalised. But if you don't think about it at all, you could be in trouble for signing the declaration. The Revenue have been trying to tighten up employment status in the construction industry for years, and this is their latest attempt.

If you are affected by CIS, or you think you might be – for example, if you spend £1m each year on building work – we will be happy to advise you on the new rules. ●

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## Booze cruise



Going over the Channel to buy cheap alcohol and tobacco has become something of an institution since the Single Market was introduced in 1993 – as long as you are bringing in the goods for your own personal use, you don't have to pay the higher rates of excise duty in the UK. Some Customs officers have been a bit sceptical about how much one person can actually consume, but they have lost some cases in which they have confiscated cars without good reason and are now more willing to accept people's word.

Where a seller despatches the goods, they're treated as being brought across the border for commercial purposes by the seller, and the seller has to pay the UK rates of duty.

A recent case threatened to change everything – and would have been either the end of the higher rates of UK duty, or the end of the retail trade in alcohol and tobacco in the UK.

The Advocate-General of the European Court of Justice made a recommendation that lower rates of duty should not only apply to goods being transported with travelling individuals, but also to goods which were sent to individuals by the seller. So you wouldn't have to go to Calais to buy a carton of cigarettes at a low price – you could ring them up and they would mail them to you.

The Advocate-General reckoned that the current rules were not in line with the objectives of the Single Market. However, the full court decided not to rock the boat – one day there may be the same rates of duty everywhere, but it's not going to happen any time soon. In the meantime, you still have to go to collect your goods in person. ●

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## Is it a phone?

Or is it a computer? One day it will probably cook your lunch and do the washing, but a “PDA” (personal digital assistant) – the most famous brand being the BlackBerry – currently is a mixture of phone and PC.

In the midst of newspaper articles about how people find them so addictive that they suffer withdrawal symptoms if separated from the PDA for any length of time, come comments from HM Revenue & Customs about the tax treatment of PDAs provided to employees. The distinction between a phone and a computer used not to matter – they were both usually exempt from an income tax charge when an employer provided them as a benefit in kind. The rules have

changed since 6 April 2006, and now there is only an exemption for a mobile phone (and only one of those per employee).

HMRC regard a PDA as more of a computer than a phone (surprise surprise). As long as it was provided before 6 April 2006, it will remain exempt from a tax charge under the old rules. If it was provided since then, it will still not be charged if it's clear that private use is insignificant. It's not clear how far HMRC will go to investigate what the level of private and business use is.

If you are concerned about the tax treatment of benefits provided to employees, send us an e-mail – or give us a ring. ●