

# BAXTERS

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# BUSINESS NEWS

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## Key tax issues for 2008/09

Now that 2008/09 is in full swing a reminder of some key developments on capital acquisitions and disposals is timely.

### Capital Allowances

For expenditure, incurred either by an unincorporated business or a company, the new tax relief changes on plant and machinery will now start to take effect. Most businesses will benefit from the new 100% annual investment allowance (AIA) for general plant and machinery. All businesses will continue to obtain 100% allowances for equipment which meet energy or water saving criteria. However once the AIA is used, any additional expenditure will get a lower annual allowance so careful timing of expenditure to maximise the availability of reliefs is essential.

### Selling your business?

For individuals making share and business disposals, particular care is required to ensure that transactions will qualify for the new Entrepreneurs' relief now that both taper relief and indexation allowance have disappeared for individuals.

Both these areas of capital transactions within businesses are subject to detailed rules. Please contact us to see how we can make them work for you and your business.

## Owning commercial property can be a taxing issue

The adverse effect of the abolition of taper relief for capital gains tax (CGT) purposes for disposals on or after 6 April 2008 has been partially relieved by the introduction of Entrepreneurs' Relief (ER).

### The effects of ER

The relief works by reducing gains (broadly, sale proceeds less cost) on qualifying assets by 4/9ths, leaving the balance of the gain taxable at 18%. By an amazing coincidence this gives a tax rate of 10%, the effective higher rate of CGT if an asset had qualified for full business asset taper relief.

ER may be available on gains of up to £1m over an individual's lifetime starting from 6 April 2008. The impact of ER will be diminished once the £1m limit is passed, whether on a single disposal or on a cumulative basis. The maximum ER which will be available is £444,444 (£1m x 4/9ths) and this means that the effective rate of CGT will climb towards, but will

never actually reach, 18% for gains exceeding £1m.

### The impact on commercial property

One particular area of concern is where an individual owns the premises from which a trader conducts their business. This might be their own business or a business run by an unconnected third party. Under the taper relief rules the gain on the disposal may well have qualified for some business asset taper. Under ER the disposal may not qualify for relief at all.

If the property has been used by the individual's own qualifying company and they sell the property at the same time as they sell the shares in the company, then ER may be available. A similar result may arise if the property has been used by a partnership of which the owner is a member. In either case, the sale of the property must occur as part of the individual's withdrawal

from the business carried on by the company/partnership. In both cases the impact of ER may be heavily diluted if the property has been rented to the company/partnership at a market value rent.

### Letting to others

In situations where the property has been let to unconnected parties, ER will simply not be available and the full gain will be taxed at 18%. Without the benefit of indexation, which is also withdrawn for disposals by individuals and trustees on or after 6 April 2008, there could be a major increase in the potential CGT due on any future sale.

There are now different issues to consider if you are planning to purchase new premises for your business and, as well as the CGT issues, it is also important to consider the availability of Business Property Relief for inheritance tax purposes.

We are happy to advise you on these matters.



# Green with envy or will it be the blues?

In a year when motoring costs have spiralled and are set to increase, the news that there are changes to the tax treatment of business cars should attract attention.

In recent years the government has introduced certain tax incentives to encourage investment in plant and machinery including cars which are more environmentally friendly or energy saving. It was reasonable to expect that further developments in this policy would occur.

## The envious green

So, on Budget day the announcement that up front tax relief of 100% would continue for businesses of all sizes on new green car purchases, was not unexpected. The arrangement which has been around for the last 6 years was due to end on 31 March 2008. It now has a new lease of life to 2013.

One key change has been made however as to what qualifies as a green car.

From 1 April 2008 the car has to emit no more than 110 grams of CO<sub>2</sub> emissions per kilometre (gm/km). Previously it was 120gm/km. The CO<sub>2</sub> emissions of a car are readily available as it is required on the vehicle registration document and so has to be supplied by the car manufacturers by law.

Various websites provide lists of eligible cars including comcar.co.uk. The list of qualifying models is currently short and often only basic versions of small cars will qualify, as higher specifications such as automatic transmission increases the emissions. However that also means that many come with a lower price tag, some at around £7,000, a further potential attraction. Qualifying cars include Citroen C1, Toyota Prius, Peugeot 107 and even a 1.6 diesel version of the Mini Clubman if you want to splash out!

## The blues for many

The reality is that most business car purchases do not currently meet this green standard and for many years those purchases have instead had only an annual allowance of 25% which gradually wrote off the cost of the asset for tax purposes. For cars which cost more than £12,000 the allowance was capped at £3,000 annually but on disposal of such cars an extra allowance was often available to cover the balance of the net cost to the business.

This allowance has now reduced from 25% down to 20% in the Finance Act 2008 as part of a general overhaul of capital allowances on business capital expenditure. More significantly the Budget 2008 made further announcements which will make many car purchases even less attractive.

It is proposed that from 1 April 2009 cars which exceed 160gm of emissions will attract an annual allowance of only 10% with cars between 110 – 160gm getting the standard 20%, irrespective of car price. Leasing such high emission cars as an alternative to buying will also result in lower deductions for tax, due to restrictions on such rentals.

For many businesses other aspects of the proposals may mean the extra allowance on disposal to write off the balance will no longer be available. Instead the business will continue to get the 10% or 20% reducing balance allowance long after the car has been sold or gone to the scrap yard.

As always the precise impact of these proposed changes on each business will vary so please contact us if you wish to discuss the impact for your business.

# Flexing the family

From April 2009 the right to request flexible working is extended to parents of children up to the age of 16. Currently it is available for children under 6, disabled children under 18 and carers of adults. But what does flexible working mean?

The concept of flexible working is very wide and employees could ask for a variety of different work patterns or arrangements under these rights. It can involve changes to the hours an employee works, the times they are required to work or their place of work.

Whilst initially this may seem burdensome it can also have significant advantages for the business in reducing absenteeism, retention of staff and staff motivation.

There are a number of working practices that involve changes to the hours and times worked:

- A flexitime arrangement requires an employee to be at work during a specified core period, but lets them otherwise arrange their hours to suit themselves.
- With compressed hours, employees work the same hours over fewer days.
- With annual hours contracts, employers and employees agree they will work a given number of hours during the year, but the pattern of work can vary from week to week.
- Staggered hours contracts let employees start and finish work at different times.
- Employees may also wish to take time off in lieu, unpaid sabbaticals or career breaks.

Employees may request a job-sharing arrangement.

This is where one job is shared between two people, a simple example would be where one person works in the morning and one in the afternoon.

Shift work, part-time work and term-time work also count as flexible work, in that they involve variations to the normal pattern of working hours for the particular business.

Flexible working may also involve changes in the location of the workplace, such as working from home.

## The legal position

An employee has a right to make a request under these rights if they have been in their current employment for at least 26 weeks. There are detailed procedures for both the employee and employer about how that request is then dealt with.

Where a request is agreed you may need to make some changes such as amending the employee's contract of employment to reflect the changes. You also need to consider the impact on other employees.

It is also important to ensure you are consistent in your approach to flexible working so keep clear records of who has applied to work flexibly and what your response was. Monitor and evaluate how the new arrangements are working so you can put changes in place if necessary.

You can find more detailed guidance in 'Flexible working - the right to request and the duty to consider: a guide for employers and employees' produced by the Department for Business Enterprise and Regulatory Reform.

Visit [www.berr.gov.uk/employment](http://www.berr.gov.uk/employment)





## When the cheque isn't in the post: preventing late payment

Late payment is a growing problem for businesses. According to a recent study, 59% of small and medium-sized enterprises encounter difficulties with outstanding debts - with 33% claiming that clients' failure to pay on time risks the survival of their business.

Smaller firms are particularly vulnerable to the effects that late payment can have on cash flow, profitability and ultimately the viability of a business. If you want to avoid falling victim to the 'late payment culture', consider the following strategies.

**Credit check your customers** – Failure to research the credit history of both new and potential customers could leave your business at risk of late or even non-payment. Minimise this threat by conducting the necessary checks with the customer's bank, a credit reference agency and some of their suppliers. Further financial information may be obtained from Companies House, the Institute of Credit Management and local media.

It is also advisable to monitor your customers' payment trends on an ongoing basis, as this may allow you to spot potential problems before they develop into something more damaging.

**Publicise your terms and conditions** – Clearly print your terms and conditions for payment on all relevant documentation that is sent to new and potential customers. Terms should clearly state the payment period for any invoice – settlement is often expected within 30 days, although this may vary depending on the type of business.

**Promote a positive payment culture** – To encourage customers to pay on time, you could consider offering small discounts for the early settlement of bills. If a customer is having problems with their payment, you may want to negotiate a deal with them. However, be wary of excuses – if they tell you the cheque is in the post, ask for further details, such as the cheque number and the date of posting.

**Invoice on time** – Distribute invoices in a timely manner to ensure the payment process remains as efficient as possible and prevent unnecessary delays by addressing the invoice to the correct contact and department. If a client has not paid on time, it is essential to pursue payment.

**Know your rights** – Under the Late Payment of Commercial Debts Act 2002, businesses have a statutory right to charge interest for the late payment of commercial debt, at a rate of 8% above the Bank of England's reference rate. You should make it clear that you will enforce these rights if an account becomes overdue. Should it come to the worst, seek legal advice about how best to pursue the debt.

**Remember: customers who fail to pay their bills could jeopardise your business. Enforcing a fair but strict payment policy will protect your client relationships and your business in the long term.**

**We can work with you to help improve your debt collection and cash flow management procedures. Please contact us to arrange a review.**

## Tax implications of an overdrawn director's account

A key fact to get to grips with when you run your own company is that the company is a separate organisation and the money is not automatically your money. You cannot draw funds from the company bank account, or ask the company to pay for your personal expenses, without some tax and accounting implications. These are not new issues and we have covered them in previous publications but as such transactions continue to attract HMRC scrutiny we hope you find this refresher useful.

When you do take money from the company, that payment has to be treated as:

- salary - which must be taxed under PAYE and is subject to national insurance when it is made available to you; or
- dividends - which must be approved by the members and be paid out of the existing taxed profits of the company; or
- a loan - which does not create an immediate tax charge but may do so if the total amount borrowed exceeds £5,000 at any point in the tax year.

The legal rules covering transactions with directors, including loans, have historically been complex. The Companies Act 2006 introduced some much needed simplification in this area. In this article we focus on the tax implications of such transactions, there are currently no plans to simplify.

A loan may be made up of cash drawings, but may also include the value of personal expenses that the company has paid for on your behalf. To avoid these expenses being treated as employer provided benefits, or as salary payments, and creating high tax and national insurance charges for both you and the company, the company may charge the value through your director's account in the company's books. This is done to ensure you are treated as repaying the expense incurred to your employer. As a result the 'charge' can quickly lead to an overdrawn director's account.

### Interest charge

When you borrow more than £5,000 there will also be an employer benefit charge on the basis that you have had an interest-free loan. You will be required to pay tax on the interest you should have paid on the loan, which is calculated at 6.25% per annum. This tax charge applies where you borrow more than £5,000 for any period whether five months or five years.

### Implications for the company

A loan made to a director should be cleared within nine months of the company's year end. If you do not do so the company must pay an extra corporation tax charge equivalent to 25% of the amount of the loan. That tax charge will be set-off against the corporation tax payment due following the accounting period in which you finally repay the loan. The tax charge on the company is in addition to the employer benefit charge on you personally.

The tax issues are complex and we recommend you contact us for advice before extracting funds from your company which may result in overdrawn directors' accounts.



# How to Avoid Common VAT Errors

As your accountants, we have experience and expertise in a range of different fields and we often come across mistakes and misconceptions which can prove to be expensive. In most cases these could have been avoided. Consider the following crucial VAT tips.

## Understanding registration limits

The most expensive VAT errors occur around the time of VAT registration. You do not have to become VAT registered if your taxable turnover (those sales that would be subject to VAT) is less than £67,000 for any 12 month period. It is vital that you check regularly that your sales remain within this limit. You can do this by keeping a rolling 12 month total of your sales, adding on your sales turnover for each month and deleting the oldest month. As soon as this total tops £60,000 you need to think about preparing to register for VAT, so ask us for assistance.

If your sales peak suddenly above the £67,000 limit, but your normal trading pattern would keep you below the VAT threshold, you must still tell HM Revenue and Customs. However, you can apply for exception from VAT registration if you can show that your sales would normally remain below £65,000.

## Using the flat rate scheme

If you are new to VAT you may be attracted to the flat rate scheme, which should simplify the VAT records you need to keep. However, to use this scheme your taxable turnover (excluding VAT) must be less than £150,000 in the next year. In addition, your total business income (including VAT and exempt supplies such as rental income) must be £187,500 or less in the next year.

You must ensure that the flat rate percentage is applied to your total business income.

If you start to use the flat rate scheme within a year of becoming VAT registered, you can reduce the flat rate VAT percentage your business pays by one percentage point. This reduction only applies to the first 12 months of registration, not the first year of using the flat rate scheme.

## Selling a business

When you sell a business, or even part of a business that could be operated separately, and the buyer is to use the assets in a similar business, VAT should not be added to the price of anything transferred in the same deal. Special rules apply if you are transferring a commercial property that may be subject to VAT, so great care is needed with all property sales.

## Evidence for export

Where goods are shipped to a customer who is outside the EU, the goods will carry VAT at the zero-rate. But if you want to take advantage of this zero-rate you must take responsibility for exporting the goods and retain evidence that the goods were in fact exported within three months of the sale to the customer. If the customer takes responsibility for the physical exportation of the goods, you must obtain evidence of the export from that customer, otherwise you become liable for VAT on the goods at the standard rate.

These are just a few of the more problematical areas relating to VAT, so if you have any doubts or queries please ask us for advice.

# An interest in tax?

It is right that those taxpayers who set out to evade their tax liabilities should be required to pay back the tax with interest and should also suffer a financial penalty. Significant changes are being made in the penalty regime from April 2009.

Under the new regime if an error is made on a tax return which leads to tax being lost, or an exaggerated claim for losses or relief is made, the maximum penalty will be set by law depending on the type of behaviour that has led to the error being made. No penalty will arise if it can be shown that the error was due to a simple mistake by the taxpayer. The three levels of unacceptable behaviour that will give rise to a penalty are defined as:

- Careless action
- Deliberate action
- Deliberate action with concealment.

Whilst no one will condone deliberate action to evade taxes the likely definition of careless action will include not doing something that a reasonable person would be expected to do. The borderline between what may be considered an honest mistake and carelessness is going to be hard to establish.

Whilst the HMRC officer will still be able to take into account the level of disclosure and co-operation, the scope for any significant reduction in penalties will be limited as the law will impose maximum and minimum levels of penalty for each type of behaviour as the table below shows.

Type of behaviour	Max penalty	Min penalty unprompted disclosure	Min penalty prompted disclosure
Careless action	30%	0%	15%
Deliberate	70%	20%	35%
Deliberate with concealment	100%	30%	50%

In each case the penalty percentage is based on 'potential lost revenue' which represents not just actual tax underpaid as at present but also amounts in relation to losses which may have been reduced as a result of the enquiry.

The message is clear – accuracy in producing any kind of tax return is paramount. Failure to do so puts HMRC almost in front of an open goal - they can miss of course but don't bank on it!

## The “pater” of... £££?

Under the Work and Families Act 2006 the government proposes to introduce additional paternity leave and pay. Under the proposals, if the mother returns to work at the end of her first six months of maternity leave, the father will be entitled to take up to six months leave. The total leave period is expected to be paid at the statutory rate currently £117.18 per week.

The government has also indicated that paid maternity leave would be extended from 39 to 52 weeks “before the end of this parliament”. This was originally planned for 2009 implementation, but has been deferred for a year and is now expected to apply to babies due from April 2010.