

# newsknight

250th anniversary edition

the newsletter of Knights solicitors llp

## Budget 2009

# Income Tax & Corporation Tax implications

**Alistair Darling's 2009 Budget continued the theme set out in his Pre-Budget report of November 2008 of attempting to provide incentives for business, with the introduction of higher rates of tax and the withdrawal of reliefs from higher paid earners. In the Budget he has provided further business tax incentives but has also significantly increased the tax burden on those higher paid individuals, which in certain circumstances gives rise to marginal tax rates as high as 70%.**

### Business Taxation

The main matters relating to the taxation of businesses outlined in the budget were:-

- No change to the rates of corporation tax
- First year allowances at 40% on the investment in plant & machinery in the year 2009/10. These first year allowances are in addition to the annual investment allowance of £50,000 that is available and effectively double the rate of allowance on any new plant & machinery expenditure over £50,000, as compared to the standard writing down allowance of 20%
- Losses carry-back for three years extended for an extra year compared with the timescale announced in the Pre-Budget report. Therefore losses in accounting periods ending between 24 November 2008 and 23 November 2010 will be available for carry back to the extent of £50,000 per year, offset against later years first.
- The £12,000 restriction on "expensive" cars and their individual treatment for capital allowance purposes are abolished for new expenditure from 2009/10, with cars emitting less than 160 g/km being included with the normal plant pool on which 20% allowances are given and cars with greater emissions forming a 10% pool.
- Dividends received by UK companies will be free of corporation tax, whether the paying company is a UK company or a foreign company, with effect for dividends received on or after 1 July 2009

### Income Tax

The main changes brought in by the Budget do not take effect until 5 April 2010 or later, but the impact of those changes is significantly more adverse as

compared with their earlier incarnation in the Pre-Budget report. The main items are:

- From 5 April 2010 a higher rate of income tax of 50% on taxable income in excess of £150,000, with a higher dividend rate of 42.5%. The imposition of these higher rates of tax will re-invigorate people's attempts to convert investments from the generation of income to the creation of a capital gain taxable at a maximum of 18%. Even if such conversion is not possible, it may still be beneficial to hold investments via a corporate vehicle which would be liable to corporation tax at rates of up to 28% and on realisation of which a shareholder would suffer capital gains tax, giving a combined effective rate of nearly 41%, but with a saving nevertheless.
- Also from 5 April 2010, the withdrawal of the personal allowance, currently £6,475, where taxable income exceeds £100,000. The personal allowance is to be withdrawn at the rate of £1 for every £2 that taxable income exceeds the £100,000 limit. The effect of this provision is that there will be an effective tax rate of 60% for taxable income between £100,000 and £112,950
- From 5 April 2011, the restriction of tax relief on pension contributions where taxable income exceeds £150,000 such that where income exceeds £180,000, tax relief would be restricted to the basic rate only. The effect of such a provision on a person making significant pension contributions could give rise to an effective tax rate of 70% on income between the two limits.

For further information please contact Henry Davenport. Email: [henry.davenport@knightsllp.co.uk](mailto:henry.davenport@knightsllp.co.uk)

## Budget 2009

# A Private Client Perspective

**Like last year, the Budget held few surprises from a tax perspective as most measures had been pre-announced in the pre-Budget report or resulted from consultations. The underlying theme from a Private Client perspective is the continued crackdown on tax avoidance. For example, serious tax evaders (where more than £25,000 tax is at stake) will be named and shamed by their names appearing on a list with other deliberate tax defaulters for a year. They will only escape the list if they make an unprompted disclosure or full prompted disclosure within the required time.**

For Knights' Private Clients (who we are sure do not drink or smoke so are uninterested in duties on alcohol or ciggies) we have highlighted what we believe are the most interesting features of the Budget. Two of them have been prompted by the need to comply with European legislation.

### Agricultural Property Relief on land in Europe

On 29 January 2009 the European Commission formally requested the British Government to review the existing inheritance tax relief for agricultural property and woodlands. They believed these to be in contravention of European treaties regarding the free movement of capital as they only apply to property in the UK, Channel Islands or Isle of Man.

There was concern in the farming and land owning community that the Government might decide to withdraw or substantially restrict these reliefs which are so important to the farming industry.

However, the Budget included an announcement that from 22 April 2009 the existing reliefs for agricultural property and woodlands will apply to property across the European economic area. It looks like agricultural property relief is here to stay ... at least until the next pre-Budget Report in November!

### Furnished holiday lettings

Landlords with income from furnished holiday accommodation in the UK are currently treated as if they are trading for certain tax purposes. This is usually beneficial for the tax payer. However, landlords with income from furnished holiday accommodation

elsewhere in the European economic area cannot qualify for this treatment. Again, it was thought that this discrepancy was not compliant with European law.

In the Budget it was announced that the Government has decided to repeal the current rules relating to furnished holiday lettings from 2010/11 and until they are repealed the existing rules are extended to accommodation elsewhere in the European economic area.

It is not known what, if anything, will replace the current rules in 2010/11. If furnished holiday accommodation ceases to have the status of a trade this will have a significant affect on inheritance tax as it is likely such properties will no longer qualify for business property relief for inheritance tax. Therefore, if you own furnished holiday accommodation in the UK or overseas you may wish to consider gifting it now whilst relief is available. Comprehensive tax advice should be taken before doing so.

### Income tax on trusts

On 6 April 2010 the trust rate of income tax will increase from 40% to 50% to tie in with the new income tax rate for high earners. Trustees should review their position. Investment in non-income producing assets (eg Investment Bonds) may be appropriate. Alternatively, income distributions to non-high-earning beneficiaries will allow a reclaim of all or part of the income tax paid (depending on the beneficiary's income tax position)

### Summary

- IHT nil rate band increases to £325,000 2009/10 and then £350,000 2010/11
- Agricultural property relief for inheritance tax extended to all countries in European economic area
- Treatment of furnished holiday accommodation as a business to be extended to all countries in the European economic area until 5 April 2010 but then will be repealed in the UK and elsewhere in the European economic area
- Income tax rate on trust income to increase to 50% from 6 April 2010

For further information please contact Kate Smith. Email: [kate.smith@knightsllp.co.uk](mailto:kate.smith@knightsllp.co.uk)



## Sky High Fundraising

Each year Knights nominates a charity as a focus for the firm's fundraising activities. Over the last 18 months we have been raising money for the Midlands Air Ambulance (formerly known as the County Air Ambulance).

Since the service commenced in 1991, the Midlands Air Ambulance has provided a vital helicopter life-saving service to the people of the Midlands and Welsh border region, making it one of the longest established air ambulance operators in the UK. The charity has operational bases at RAF Cosford, near Wolverhampton, Strensham, in South Worcestershire and Tattenhill Airfield in Staffordshire and flies over 3,500 missions each year. It's not just daredevils that benefit from their services either; they are regularly called to serious road traffic accidents, and in the past have rescued a child with severe burns and a construction worker who had fallen from scaffolding. The service can transport patients to hospital from anywhere in the region in less than 15 minutes. This rapid response greatly increases the chances of survival by ensuring that patients reach the hospital within the "golden hour" which separates an accident from turning into a fatality.

The Midlands Air Ambulance relies entirely on charitable donations and does not receive any public or National Lottery funding. The charity needs to raise over £5.6 million each year to continue to provide this important service.

During the past twelve months Knights have hosted a number of fundraising events, including a fashion show organised by the trainees, a jewellery sale and a charity raffle. At Christmas, employees made donations to the charity in place of sending Christmas cards to colleagues. The firm has also supported Lindsay Howland, partner in the Tax, Trust and Private Client Department who completed a sponsored swim for the charity and Richard Watkinson, husband of Rachel Watkinson, also a solicitor in Tax, Trust and Private Client Department, who took part in the Great North Run 2008. All this hard work paid off and in February we were delighted to present the charity with a cheque for £5,776.09. This is in addition to the cheque for £4503.59 which the firm presented to the charity's Cosford base in April 2008. Knights is proud to have sponsored such a worthwhile charity, and is grateful to all those involved in the fundraising.

## Asset Protection and Tax-planning Opportunities in a Recession

The current economic slump raises a number of pressing concerns in relation to the passing on of assets. As the economy slows and the number of people facing economic difficulties rises along with unemployment, the risk is that, in the event of your death, any assets that you wish to pass on to your next of kin could be swallowed up due to unforeseen financial problems.

In many cases therefore it may be appropriate to consider a somewhat more sophisticated Will, designed to meet the circumstances of your family, placing your estate into a trust, in order to safeguard against this position arising. If one of your beneficiaries is suffering from financial difficulties, then the assets which would otherwise be passed to that beneficiary could be managed for his or her benefit and payments out only made when the Trustees were sure that they would not be claimed by a creditor. This can also serve to protect assets if the survivor of a couple ultimately has to go into a nursing home, by ensuring that the Local Authority cannot claim the assets in question.

The recession has also created another, unrelated, tax planning opportunity. If you are a single person with an estate over £312,000.00, or a married couple or civil partnership with a combined estate of over £624,000.00, then everything over and above this allowance, unless it qualifies for specific reliefs, will be taxed at a rate of 40%. In addition, assets which you have given away in the seven years prior to your death will be brought into account. You are however able to make gifts of up to £312,000.00, the current personal threshold for inheritance tax, directly or into a discretionary trust. The current economic climate in which property and share prices have declined, means that you will in fact be able to give a higher proportion of your assets into trust, as the relevant value for tax purposes will be the date of the transfer into trust: perhaps to show that every cloud does have something of a silver lining! Transferring the assets into trust now ensures that any future increase in the value of these will not be chargeable to Inheritance Tax when the economy recovers.

Therefore, if you are concerned about Inheritance Tax and do have surplus assets that you are in a position to dispense with, the recession offers the possibility of you reducing the amount that the Inland Revenue will take on your death, by making tax efficient lifetime gifts now.

It is essential that you take advice to determine the most effective approach taking into account your personal circumstances.

For further information please contact Robin Stephenson.  
Email: [robin.stephenson@knightsllp.co.uk](mailto:robin.stephenson@knightsllp.co.uk)

## The Government is clamping down on illegal workers in the UK; The burden of policing the workplace now rests with the employer. Are you compliant? Can you be sure?

### 10 essential questions to ask yourself:

- Q.1** I haven't any foreign workers so does this apply to me?  
**A.1** Yes it does, as you must be able to prove that all your employees have the right to work in the UK. It is essential that you know whether you require a licence or whether your employees should be registered with the Home Office. You must have procedures in place to identify the right to work in the UK, for all your employees. Failure to treat everyone consistently may result in a claim of discrimination.
- Q.2** As I employ European workers, they automatically have a full right to work in the UK don't they?  
**A.2** Not necessarily so: citizens from some member states have, but others have further steps to take to work legally in the UK.
- Q.3** What are the consequences of not checking my employees' right to work in the UK?  
**A.3** Failure to identify your employees' right to work in the UK may result in a fine of £10,000 per unauthorised employee for the company and up to 2 years in prison for you.
- Q.4** How do I know if I have the correct document to prove the employee's right to work in the UK?  
**A.4** With so many different routes of entry for workers to come to the UK, it is not surprising that employers can be daunted as to what documents their employees should have. Knights have extensive experience in immigration law, deal with official documents from many countries around the world and can advise employers on how to ensure compliance.
- Q.5** How do I know if my existing procedures are adequate?  
**A.5** Knights can audit your current recruitment processes and personnel files, and then advise on any ongoing obligations. This may reveal that your procedures are already sufficient, giving you peace of mind.
- Q.6** What are my initial and ongoing obligations as the employer of a foreign worker?  
**A.6** Amongst other duties, you have a positive duty to keep the UK Border Agency informed of employees' circumstances and report any abuse of the system; and you may have to undertake document checks on an annual basis.
- Q.7** If I find I am employing foreign workers in breach of the new rules, I'll just terminate their contract. That will solve the problem, won't it?  
**A.7** Foreign workers have the same legal rights as British workers. You may be liable to an employment law claim instead. We have a dedicated team of Employment Specialists who can advise you about this.
- Q.8** If I need a licence, how will I know what type of licence I need?  
**A.8** That will depend on the structure of your business and the categories of foreign workers you employ. Knights will identify the appropriate course of action for you.
- Q.9** How do I keep the costs down?  
**A.9** Knights are sensitive to commercial realities and will offer effective solutions that reflect the needs of your business.
- Q.10** How can I afford a fine of £10,000 and/or the prison sentence if I am found to have an unauthorised employee?  
**A.10** Knights has recognised the vulnerable position that employers may be in and can provide a fixed fee audit service, together with advice and representation to clients. These services, in addition to the obvious assistance they give, will assist you with defending an action taken against you.

For further information please contact Lynne Ingram. Email: [lynne.ingram@knightsllp.co.uk](mailto:lynne.ingram@knightsllp.co.uk)

### There is a growing need for overseas professionals to obtain independent advice and representation for applications to come to the UK



Vincent Fox has joined Knights to assist Lynne Ingram with her established and growing client base in business immigration. Vincent has worked in private practice as well as in local and central government, covering a wide range of immigration issues, related to the needs of individuals in immigration law. Vincent provides advice and representation, including advocacy, to clients and their families who wish to come to the UK on a temporary or permanent basis.

For further information please contact Vincent Fox.  
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# Are your contractual arrangements working for you?

**In light of the global credit crunch and subsequent economic downturn, organisations will be looking to protect their business interests. Contractual arrangements ought to be considered very carefully to ensure that they provide protection and flexibility.**

As a supplier, you may be looking to enter into longer term supply agreements to have certainty over the length of contracts and to protect cash flow. As a customer, you may be looking to ensure maximum flexibility by having an ability to terminate the contract early without having to compensate the supplier for early termination. You may also be contemplating termination of an existing contract, which from a strategic or financial point of view no longer represents a good deal.

The first step in any review of contractual arrangements is, of course, to identify what arrangements are in place. It may be that signed contracts cannot be found or were never entered into. It should not be assumed that, because no formal written contract has been signed, there is no binding contract in place. It is necessary to build up a picture of the relationship between the parties to try and establish what terms form the basis of the contract between them, whether this is through correspondence, course of dealings or other documents evidencing the terms of the contract.

## Termination of contractual arrangements

In some cases extricating yourself from contractual obligations will be straightforward, for example if the contract contains specific provisions enabling a party to terminate upon giving notice.

Most commercial contracts will enable a party to terminate where there is a breach, commonly for non-payment, none or late delivery and insolvency events. In such

circumstances, the exact terms of the contract must be considered carefully to see if the contract allows for termination forthwith upon breach or whether the breaching party needs to be given an opportunity to remedy the breach within a specified period.

Generally speaking, if there is no contractually agreed method of termination, a party will usually remain bound by the contract. In certain circumstances, a party may be entitled to treat the contract as having been terminated by reason of the other party's breach. This is commonly known as a "repudiatory breach" (i.e. a breach which is sufficiently serious to entitle the innocent party to treat the contract as terminated with immediate effect and sue for damages for breach of contract). If a party seeks unilaterally to withdraw from the contract without having grounds to do so, then this is likely to amount to a repudiatory breach. Advice should be obtained before taking this step, because the innocent party will have the right to claim damages and the right to decide whether to accept the repudiatory breach, or to affirm the contract (where the contract will continue in force despite the attempted termination). Affirmation of the contract can be by words or actions and so care must also be taken by the innocent party not inadvertently to affirm the contract, thereby losing the right to treat the contract as repudiated.

## Frustration

Contracts can also become "frustrated" where a serious event occurs which is both unexpected

and beyond the control of the parties and which will make performance of the contract in the changed circumstances fundamentally different to the original contract. The legal doctrine of frustration is construed narrowly and therefore has fairly limited application. The fact that due to the current economic climate a contract has become unprofitable to perform is unlikely to be sufficient to amount to frustration.

## Consequences

It is also important to consider the consequences of termination. For example, the Transfer of Undertakings (Protection of Employment) Regulations 2006 may apply where services have been performed by a group of the supplier's staff who work wholly or mainly on contracted services for a particular customer.

When negotiating commercial contracts (in particular, provisions dealing with termination) or taking steps to terminate them, careful consideration should be given to the issues outlined above. Each case will be different, but a thorough review of existing contractual arrangements and deliberation over the termination clauses in future contracts will be critical in protecting an organisation's business interests in the current economic climate and, before taking steps to terminate, explore your legal, commercial and strategic options, seeking advice if appropriate.

For further information please contact Rebekah Shenton. Email: [rebekah.shenton@knightsllp.co.uk](mailto:rebekah.shenton@knightsllp.co.uk)

## Knights Charity Unit

**Headed by Jenny Hampson, Knights has a well established and thriving charities unit made up of lawyers from many different areas of the firm. We understand that serving the needs of charities means embracing a whole range of disciplines.**

Uncertainty about the economic climate is concerning us all and charities, in particular, need to think carefully about how to maintain sustainability and public support at this difficult time. Good governance is the key to creating and maintaining a successful charity. Whether your charity is large or small Knights can help. Being a trustee can be a very challenging task particularly in this climate of uncertainty.

Charities would be well advised to dust off their governing documents and ensure that these are still appropriate and relevant to the every day activities of the charity. From March 2009 all charities will be required to report to the Charity Commission in their annual report as to how they are providing a public benefit. This will be a very easy test for most charities to satisfy but some may face difficulties in justifying their charitable status, particularly fee-paying independent schools.

We have a wide experience of the pressures and issues that trustees and charities face on a day to day basis. Our charity clients have the benefit of our specialist expertise, usually only found in City firms, and at a significantly lower cost. We pride ourselves on giving our clients practical and pro-active advice to help the smooth running of their charity.

For further information please contact Jenny Hampson. Email: [jenny.hampson@knightsllp.co.uk](mailto:jenny.hampson@knightsllp.co.uk)



With a history of success spanning 250 years, Knights is a law firm that believes great working relationships create exceptional results.

## Mid-summer garden party

Everyone at Knights would like to invite our clients and business associates, and their immediate families to join them in celebrating the firm's 250th Anniversary.

From 12 midday to 4:30 pm on Saturday 20 June 2009, our offices and grounds will become the setting for a mid-summer garden party and we are looking forward to welcoming as many of you as possible at some point during the afternoon.

For security reasons numbers will need to be monitored so please let us know as soon as possible exactly how many places you require. You can confirm your attendance in a variety of ways:

Email: [steve.rushton@knightsllp.co.uk](mailto:steve.rushton@knightsllp.co.uk)  
Online: via our website at: [www.knightsllp.co.uk/celebration](http://www.knightsllp.co.uk/celebration)  
Phone: Steve Rushton on 01782 619225

Places will be allocated on a first come first served basis.



# Knights rural - specialists in your field

Knights farming & rural business unit is recognised nationally as **“One of the strongest agriculture and estates practices in the country.”** (Legal 500, 2007 edition).

## Owners of farmland: “Will you achieve agricultural property relief at 50% or 100%?”

**Many landowners presume that they do not have to worry about inheritance tax as the land is farmed and they believe it is exempt from inheritance tax.**

It is true that relief from inheritance tax is often available on agricultural land subject to various conditions being met. However, relief can be due at two different rates - 50% and 100%. Obviously, which rate applies will often make a significant difference to the overall inheritance tax bill.

If you farm yourself (as an individual who owns the land) 100% relief will be available. However, if the land is let (whether to a third party or perhaps to a family farming partnership), the rate of relief will depend on whether you can obtain vacant possession of the land within 24 months.

Broadly speaking, if the tenancy (whether written or not) commenced prior to 1 September 1995, relief will be restricted to 50% whereas if the tenancy commenced on or after 1 September 1995, 100% relief will be available.

We often come across cases where farming families have put tenancies in place before 1 September 1995 for very good reasons, which will now mean that relief is restricted to 50% and the farm might have to be sold to meet inheritance tax liabilities. Wherever the land is occupied by an individual, partnership or company who is not the landowner, the terms of occupation (whether written or not), should be examined to ensure relief is not restricted. If relief is restricted to 50% then changes can often be made to increase the relief to 100% although the tax implications of the surrender and re-grant of a tenancy do need careful consideration.

It should be noted that agricultural property relief applies only to the “agricultural value” of the land. If there is significant hope value for development then advice should be taken to ensure business property relief can be claimed. This aspect will be looked at in a later edition of Newsnight.

For further information please contact Kate Smith. Email: [kate.smith@knightsllp.co.uk](mailto:kate.smith@knightsllp.co.uk)

## Come and join us at Staffordshire County Show 27 and 28 May 2009



**rural helpline**  
01782 338845

Knights would be delighted to see clients and business associates at the County Show again this year. Please call at **our marquee situated in Block R Stand 265**. Specialist lawyers from our farming & rural business unit and private client department will be available for you to chat with.

## Cheltenham expansion

As Knights' Cheltenham office approaches its first anniversary, we are delighted to introduce **Ben Thomas** as a new member of our team.

Ben studied law and completed his LPC at the University of the West of England, Bristol. He then trained, qualified and worked at BPE. He now specialises in landlord & tenant, commercial sales, acquisitions and corporate support.

Ben will be based at our office which is situated in the Eagle Tower building in the centre of Cheltenham, his appointment demonstrating that our Cheltenham office continues to go from strength to strength.

Working out of Cheltenham (l to r)  
Ben Thomas and Mark Anton-Smith



## Changes to the Planning Appeals System

On 6 April 2009 a number of key changes to the planning appeals system came into force. These changes include:

Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2009

### The contents of this order:

- Apply to ‘householder applications’ made on or after 6th April 2009;
- Reduce the time limit for appeal from 6 months to 12 weeks;
- Amend the documentary requirements for an appeal so that the person making the appeal will only be required to submit an appeal form, the original application and the Local Planning Authority’s decision notice;
- Make some minor changes to the form of notice to be served when an application for an appeal is made.

Town and Country Planning (Appeals)(Written Representations Procedure) (England) Regulations 2009

### The contents of these Regulations:

- Apply to householder appeals where the Secretary of State has determined that they should be dealt with by means of written representations;
- Introduce a new expedited appeal procedure;
- State that interested parties are notified of the appeal and given the opportunity to withdraw any representations made in relation to the application but are not given the opportunity to make further representations in relation to the appeal;
- State that the person making the appeal and the Local Planning Authority are not given an opportunity to comment on each others representations;
- Make minor changes to the procedure for householder appeals and other appeals which are not dealt with by written representations.

Planning Act 2008 (Commencement No. 1 and Savings) Order 2009.

### This Order, brought into force on 6 April 2009, varies certain provisions of the Planning Act 2008, for example:

- the Planning Inspectorate are allowed to determine the appeal method on behalf of the Secretary of State;
- Criteria used are published on the Planning Inspectorate website. The Planning Inspectorate has to make its determination within 7 working days from the receipt of a valid appeal;
- Local Planning Authorities are enabled to decline to determine certain applications, including applications that are the same, or substantially the same, as a deemed application that arose from an enforcement appeal, and were made within the previous 2 years, where there has been no significant change in certain relevant considerations in the meantime.

Town and Country Planning (Hearings and Inquiries Procedures)(England)(Amendment) Rules 2009

### These rules:

- Remove the 9 week comment stage in both hearings and local inquiries;
- Introduces a requirement that statements of common ground in local inquiries are to be submitted within 6 weeks of the ‘starting date’ (i.e. the date on which the Secretary of State notifies the person making the appeal and the Local Planning Authority whether the appeal will proceed as a hearing or as an Inquiry);
- Correct the defective drafting in the existing rules. These corrections include clarification that statements of case must be sent to the Secretary of State within 4 weeks of being required.

Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Amendment)(England) Regulations 2008

### These regulations:

- Give planning inspectors the power to determine certain prescribed classes of appeal;
- Include tree preservation order appeals and appeals relating to old mining and mineral permissions under the Environment Act 1995.

### Costs

- Costs regime to be extended to all appeals by written representations
- Revised costs circular to be published shortly.
- An application for costs must be timely and the person against whom the costs award is sought must have acted unreasonably.

### Conclusion

- These changes are designed to cut red tape, reduce delays and make the system more proportionate and customer-focused.
- However, concern has been expressed about the changes, particularly the ability of the Planning Inspectorate to determine the appeal method. Concerns have also been raised over the reduced time limit for Statements of Common Ground.

For further information please contact Sue Marsh.  
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