// Newsletter WINTER 2009

BRENEERS

CHARTERED ACCOUNTANTS
& BUSINESS ADVISERS

Retaining your title?

When a customer becomes insolvent and you have not been paid for the goods you have supplied a 'Romalpa', or 'retention of title', clause will put you in a much stronger position. A retention of title clause in a sales contract allows a supplier to transfer goods to a customer, yet retain the legal and beneficial title for those goods until they are paid for.

If the customer defaults on payment, the supplier can enter the customer's premises to inspect or remove its goods. The customer will also accept an obligation to insure the goods and store them separately so that they can be identified.

Contract clauses need to be modified for different types of goods and according to what the supplier wants. It depends on what the customer intends to do with the goods after taking delivery.

For example, the most basic retention of title clause will not be effective if the goods are immediately re-sold, or are incorporated into a building or manufacturing process, because they can no longer be separately identified. Where a supplier is selling a high volume of goods on credit to the same customer, it may not be practical to separately identify each item and match it to a particular payment made.

Contract clauses can be modified to include:

A **retention of title** clause, allowing the supplier to remove its own goods. It will generally contain a clause to claim the proceeds if its own goods have instead been sold on.

An **aggregated title** clause, allowing the supplier to retain title of the output, or a portion of it, that has been produced after its goods have been incorporated into a building or manufacturing process.

An **all sums clause**, or 'all monies' clause, which is suitable where there is a high volume of goods and matching each item to an amount paid is complicated. Title to the goods will not pass until all sums for all debts owed by the customer are paid.

A **proceeds of sale** clause, which is useful where the goods are to be modified for use in a manufacturing process or building. This will allow the supplier to sell off or acquire the title in the goods or building that is created.

While these clauses all provide some protection for the supplier if a customer defaults on payment or goes bankrupt, it is difficult to ensure that goods are not damaged. Conflicts may also arise with other suppliers if they too have included aggregated title and proceeds of sale clauses into their contracts. Of course, a contract will combine several clauses so legal advice is required.

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This newsletter is for general information only and is not intended to be advice to any specific person. You are recommended to seek competent professional advice before taking or refraining from taking any action on the basis of the contents of this publication. The newsletter represents our understanding of law and HM Revenue & Customs practice as at October 2009.

Taxing assets abroad

The most common schemes or arrangements devised to minimise UK taxes (if you are UK resident) place assets in the hands of an offshore trust, offshore company, or non-resident individual. Income from the assets is then taxed offshore and escapes UK tax. The problem is that if you then derive some form of benefit from that income you will find that you have an income tax charge under the UK's anti-avoidance provisions.

When you are ordinarily resident in the UK, you are taxed on your worldwide income whether or not you actually receive it in the UK. When you are non-resident, you are, in general, only taxed on your foreign income to the extent that it is brought in, or remitted to the UK.

Trusts: If you set up an offshore trust, and you retain an interest in the trust (so you are not excluded in any way from benefiting from its income), then you will be taxed on the income of the trust. This will also apply to you if you were non-resident when you set up the trust, and then became UK resident at a later date.

Companies: If you transfer some of your assets to an offshore company, and derive a benefit from the income of those assets, anti-avoidance rules apply to tax you as if the company's income is your own. These apply even if you do not directly own the company. Offshore companies which are under the control of UK residents are subject to Controlled Foreign Company (CFC) anti-avoidance provisions. These serve to remove any corporation tax advantage that may be obtained by setting up the company in a low tax jurisdiction.

Individuals: If you transfer your property to another individual, whether resident or non-resident in the UK, but you continue to derive benefit from that income, you will be taxed on it as if you still owned the asset which produced it. There will not be a double tax charge if your property is already taxed in the UK under the remittance basis.

The rules targeting tax avoidance through the transfer of assets abroad are very far-reaching. They apply where a UK resident enjoys income or a capital sum derived from an asset. The rules further extend to impose a tax charge by virtue of related transactions. So the individual who is taxed need not necessarily be the same person as the one who transferred the assets abroad originally.

Anti-avoidance legislation is extremely complex. Please contact us if you are thinking of transferring assets abroad or if you think you might be affected by these rules.

Did you know that there is no longer a £100 fixed penalty for people who are more than three months late in telling HM Revenue & Customs (HMRC) that they are self-employed?
However, delay could still be very expensive. Anyone who starts a business after 5 April 2009 should still tell HMRC immediately so they can start paying the right amount of national insurance contributions (NICs). They will only be penalised if they have not notified HMRC by 31 January following the end of the tax year in which they became self-employed. The downside is that the penalty can then be up to 100% of the unpaid NICs, depending on the circumstances, although it will usually be 30%. There will be further penalties if income tax is paid late as a result of late notification.

The road ahead for car benefits

A dramatic rise in the tax charge on company cars at the luxury end of the market is in store for some high-earning directors and employees from 6 April 2011.

The main change is the removal of the £80,000 price cap. The car benefit is calculated by applying a percentage to the car's list price. This percentage depends on the car's CO_2 emissions figure, and ranges from 15% to 35%. However, the maximum list price for this at present is £80,000. This means that the highest annual car benefit an employee or director could face in a year is currently £80,000 x 35% = £28,000. At a top rate of tax of 40%, this results in income tax of £11,200.

From the 2011/12 tax year, the price cap will be removed and the actual list price will be used to calculate the benefit. When you consider that the top rate of income tax will then be 50% for individuals with taxable income of more than £150,000, the resulting effect will in some cases be quite startling. For example, a director earning well in excess of £150,000 and driving a car costing £140,000 will be paying tax of £11,200 this year (2009/10), £14,000 next year (2010/11) but £24,500 in 2011/12.

Other changes include lowering the emissions bands to which each 'appropriate percentage' applies by 5g/km next year and another 5g/km in 2011/12. The effect for most drivers will be to increase the percentage used by 1% in both years. For the majority of directors and employees, who have cars below £80,000 in value and earn less than £150,000, the change will mean an extra £80 of tax for 2010/11 and another £80 the following year.

Whereas this is relatively insignificant, the cumulative effect of the changes is to further increase the tax burden on company cars, both for employees and employers through increased national insurance contributions. Nor is any government likely to lighten it in the foreseeable future. Now may be the time to look again at alternative ways of rewarding employees, such as paying the comparatively generous maximum tax-free mileage allowances to employees making use of their own cars on business, or perhaps a salary-sacrifice scheme, or a 'pick and choose' menu of different benefits with varying costs.

Ready to face 17.5% VAT?

The temporary reduction in the rate of VAT to 15% ends on 31 December. Is your business ready for the increase to 17.5% that will take effect from 1 January?

For example, if you are a retailer who makes sales that include VAT, then the fraction used to work out the amount of VAT included in a sale will change from 3/23 to 7/47. So if a sale of goods is made for £1,081 including VAT, then the VAT element of the sale is £141 (£1,081 x 3/23) before 1 January and £161 (£1,081 x 7/47) on or after 1 January – a potential tax saving of £20.

There are special rules that could save tax for you or your customers. But do not forget that the rules are only worthwhile if your customers cannot reclaim VAT, for example if you make sales to the general public. If all of your customers can claim back the VAT you charge, or only small amounts of money are involved, then it will be easier just to charge 15% VAT on all of your sales or payments up to 31 December and 17.5% after this date.

Here's a reminder of a couple of possible tax savings:

- Where goods are invoiced or paid for in December or earlier, they will still be subject to 15% VAT, even if they are delivered to a customer on or after 1 January. There is an exception if the value of the goods exceeds £100,000 or the invoice is payable more than six months after it is raised, but these situations are limited.
- If you supply services to a customer on a continuous basis, then VAT is normally due according to the rate in force when you raise an invoice or receive money from the customer. However, if an invoice raised or payment received in January or later includes work done before 31 December, then 15% VAT can still be charged on the value of the work carried out up to this date (and 17.5% VAT charged for work carried out on or after 1 January). In effect, there will be opportunities to boost business cash flow and encourage customers to pay in advance for goods or services they will receive in January or later to take advantage of the lower rate of VAT.

New procedures are also being introduced on 1 January 2010 which will be relevant if you pay VAT on business expenses in other EU countries. Please let us know if this could affect your business.

Did you know that all companies will have to file their tax returns online from 1 April 2011 for accounting periods ending after 31 March 2010? They will also have to pay corporation tax electronically. The requirements also apply to clubs, associations and other unincorporated bodies that make corporation tax returns. HM Revenue & Customs will no longer accept paper returns.

Many companies already file online, but at present you simply attach your accounts as a pdf document. From 1 April 2011, accounts and tax computations will have to be in Inline XBRL (eXtensible Business Reporting Language). Companies House will use the same system and joint filing should be possible.

Redundancy: not just a numbers game

Employers need to take great care when dismissing an employee – especially where age discrimination may be involved, as a recent case has shown. They must act reasonably and follow statutory procedures, or else they could end up facing a potentially expensive claim for unfair dismissal.

A dismissal is treated as 'fair' if it is for any of the following reasons:

- Bad conduct or the employee's inability to do the job, or some other duty as imposed by the employment contract.
- Redundancy, which can occur for economic reasons or changes in the business.
- Retirement, where the employee has reached retirement age for that employment, or the default retirement age of, for example, 65.
- Some other substantial reason, for example, where a temporary post has come to an end.

However, employers must show that they followed the correct procedures:

- If dismissal is on the grounds of conduct, employers must use an established disciplinary procedure.
- Where an employee is being dismissed because of incompetence or lack of capability, it must be shown that an opportunity to improve was offered.
- When redundancy gives rises to dismissal, employers must consult with the employee, or employee representatives. Employees should be selected for redundancy on grounds that do not discriminate against workers. The chosen criteria must be consistently applied and be objective and fair.
- Employers must give six months' notice if dismissal is due to retirement, but employers are also obliged to consider an employee's request to work beyond retirement age.

Age discrimination may affect the selection of an older worker for redundancy following the judgement in *Killa v Electronic Motions Systems Ltd* (2008).

59 year-old Mr Killa was selected for redundancy and dismissed at the first consultation. The Tribunal found that his employer had failed to use objective criteria or a proper selection process to determine which employees were to go, and although there was alternative work available in the company it was not offered to him.

In awarding damages for future loss of earnings, the Tribunal increased them to counter the effect of discrimination against older workers when considering Mr Killa's chances of gaining future employment.

VAT on cross-border services

If you supply or receive cross-border services, beware of changes to the VAT rules that will come into effect EU-wide on 1 January 2010. Services into the UK that were not liable to UK VAT before that date could now become liable, and services out of the UK could cease to be liable to UK VAT.

A service is liable to UK VAT if it takes place in the UK. Currently, the basic rule (subject to exceptions) is that the service takes place where the supplier 'belongs' (is established). From 1 January 2010, this treatment will still generally be true if the customer is a private consumer (non-business customer), but if the supply is to another business, the service will generally be treated as taking place where the customers are established. Under the reverse-charge rules, customers will then have to account for VAT in their home country on that service. There will, as before, be exceptions to the basic rule, such as for hiring vehicles, transport of goods, services connected with land etc.

Although the new rules will greatly reduce the number of occasions where a business incurs VAT outside its own member state, there will be added bureaucracy. Businesses will be expected to report services supplied to and taxed in other member states, and not just goods (as now), in their EC sales lists.

New capital allowances for cars

From April 2009, businesses receive the rate of capital allowances for new expenditure on cars based on the car's CO_2 emissions. Previously, capital allowances for cars costing over £12,000 were limited to £3,000 a year.

Under the new rules, a car that emits no more than 160g/km will normally be a 'main-rate car' and qualify for the full 20% annual writing-down allowance, regardless of price. Cars emitting more than 160g/km qualify for 10% a year allowances only, but again on the full price of the car. Cars that are more than eight years old (those first registered before 1 March 2001) also qualify for the full 20% allowance, regardless of their actual emissions figure.

An equally crude and simple rule now applies to leased cars. In place of the previous formula scaling down the allowable rental deduction for cars costing more than £12,000, 'main-rate cars' now qualify for full rental deductions, whereas for other cars, only 85% of the rental is deductible.

The old rules continue to apply for a five-year transitional period to cars bought before 6 April 2009 (or 1 April 2009 for companies).

KEY TAX DATES

Every month

1 Annual corporation tax due for companies with year ending nine months and a day previously, eg tax due 1 May 2009 for year ending 31 July 2008

14 Quarterly instalment of corporation tax due for large companies (depending on accounting year end).

19 Pay PAYE/NIC and CIS deductions for period ending 5th of the month if not paying electronically. Submit CIS contractors' monthly return.

22 PAYE/NIC and CIS deductions paid electronically should have cleared into HMRC bank account.

30/31 Submit CT600 for year ending 12 months previously. Last day to amend CT600 for year ending 24 months previously.

If the due date for payment falls on a weekend or bank holiday, payment must be made by the previous working day.

November 2009

30 File accounts at Companies House for private companies with year ended 31 January 2009 and public companies with year ended 31 May 2009.

Last date to notify HMRC of an intention to make a disclosure under the New Disclosure Opportunity (NDO)

December 2009

28 File accounts at Companies House for private companies with year ended 28 February 2009.

29 Last day to submit 2008/09 tax return online to have unpaid tax of up to £2,000 collected through the 2010/11 PAYE code.

File accounts at Companies House for public companies with year ended 30 June 2009

January 2010

1 VAT standard rate returns to 17.5%. Major VAT changes for cross-border transactions.

Stamp duty land tax residential property threshold returns to £125,000.

14 Due date for CT61 return and payment for quarter to 31 December 2009.

31 Submit 2008/09 self-assessment return electronically (up to £100 penalty if late). Pay balance of 2008/09 income tax and CGT plus first payment on account for 2009/10.

File accounts at Companies House for private companies with year ended 31 March 2009 and year ended 30 April 2009 (shorter filing period for accounts starting after 5 April 2008) and for public companies with year ended 31 July 2009.

Last day to disclose and pay under the NDO if filing on paper.

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