FiNE LINES.

Advice that adds up

The Lubbock Fine Magazine ● ISSUE 58

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IT'S A FIRST FOR LUBBOCK FINE

Clare Munro

For the first time in the firm's history, we are delighted to have appointed a female partner and to have fulfilled an ambition held for many years. Having joined us on 7th May 2013 as senior tax partner, Clare Munro brings the number of people in our busy tax department up to 10.

"I'm really looking forward to driving our tax department to add even more value to the excellent service that we already deliver to business and private clients," explained Clare. "Tax is a field where it's possible to demonstrate real value. In an arena where it's so easy for people to trip up, we can offer real protection whilst at the same time arranging their business affairs to mitigate tax liabilities."

"We are very lucky to have persuaded Clare to join us," said managing partner, Mark Turner. "Her in-depth expertise across the owner-managed business sector is a perfect fit with our client portfolio and, along with the tax team, we are all very much looking forward to working with Clare to help strengthen our clients' tax profiles."

Clare originally trained at Arthur Andersen which, at that time, was one of the Big-6 firms. She followed that with a stint at PricewaterhouseCoopers (PwC) in the tax department and joins us from a similar size, mid-tier firm where she spent the last 14 years.

Having studied law at Nottingham University, she went on to complete a masters in Economic and Social History at Cambridge. Three years of studying law had convinced Clare that a career as a solicitor wasn't for her. Her first post-university job was that of a systems analyst, concentrating on accountancy software, and it was this that sparked her interest in the profession.

"Whilst I had decided against a legal career, I knew I wanted a professional qualification and the software job made me realise that I had an aptitude for figures and was well suited to accountancy."

Qualifying with Arthur Andersen wasn't exactly a walk in the park. "It was hard work," she explained. "Of the five women who joined together, I was the only one who managed to stay the course and actually qualify at the end of it." As soon as was polite, Clare moved on to join PwC's corporate tax unit. There she spent much of her time dealing with large, multi-national company issues, concentrating on transfer pricing and structuring multi-national/cross-border transactions.

For the past 14 years she has been working across a portfolio of owner-managed businesses »

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and high net worth individuals. Her focus has been on developing ways to improve clients' tax profiles to aid financial efficiency. Some of her more rewarding work has been in the area of reorganising business structures for increased streamlining and more cost-effective operations.

"As well as being in a partnership that clearly communicates really well, I'm looking forward to the challenges that the firm's interesting mix of clients will bring," explained Clare. "I was also attracted to Lubbock Fine due to the potential of the Russell Bedford International network, the firm's Dubai link and the obvious opportunities for interesting cross-border work that those present. The more different the clients' circumstances, the more interesting the tax profiles and the range of planning opportunities become."

Clare contends that it isn't always the most complex or aggressive planning that brings the greatest reward for clients. As an example, she recently arranged for a client to combine the shares of their business between two spouses, doubling the available entrepreneurs' relief to £20m on the eventual sale of the business.

Whilst she's keen that Lubbock Fine's tax department adds value in all sorts of ways, she's mindful of the recent furore around tax avoidance.

"Structuring life in a more tax efficient way without crossing the line created by the recent media storm is a minefield. Whereas five to 10 years ago tax planning was sexy and attractive, these days people are pretty apprehensive. Helping them to reduce their tax liabilities whilst at the same time making sure the planning does not fall into HMRC's view of artificial avoidance will be key."

Along the way, Clare married the man she first met as a student at university and had two children now aged 18 and 21. "Whilst I've always had great support, I've never felt that gender has been an issue in my working life. I do appreciate though that there are genuine difficulties for many women in this area. It may not always be possible or practical to have 'it all' but having 'a lot' or having a good balance is pretty realistic these days. Now that my children are virtually off my hands, it's a green light for me to get 'stuck in' and really develop the rest of my career."

We're sure that all of our clients will join us in welcoming Clare and wishing her the very best for a happy and successful future with us. LF

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Clare Munro

SHOCK RESTRICTION ON DEDUCTION FOR LIABILITIES FOR UK INHERITANCE TAX

We are all familiar with the recent media fascination with 'tax avoidance' but have you considered whether it affects you?

The current Finance Bill contains new provisions that could increase your estate's inheritance tax (IHT) liabilities.

The Budget press release stated: "this measure will only affect individuals entering into avoidance schemes involving debts to artificially reduce the value of an estate."

However, the draft legislation paints a very different picture as the following scenario demonstrates.

Example scenario – BPR assets

Mr Jones has a thriving trading company valued at approximately £1.5m and a house worth £1m. To fund his business he borrows £500,000, secured against his house (perfectly normal). Under existing legislation, that debt will reduce the value of his house for IHT purposes. No IHT should be payable on the £1.5m value of the company as it qualifies for business property relief (BPR). So, if the house is worth £1m, upon his death, IHT is calculated on £500,000 which triggers an IHT liability of £70,000 (assuming the nil rate band of £325,000 is available for offset).

The draft proposals state that the debt will only reduce the value of the house to the extent that it has not been used to finance the business.

The result is that the debt reduces the value of Mr Jones's company (not his house) even though the value of the company qualified for 100% BPR anyway. The effect is that Mr Jones's IHT charge increases from £70,000 to £270,000 as follows:

	£000
Business	1,500
Less debt	(500)
Net	1,000
Less BPR	(1,000)
House	1,000
Total estate	1,000
IHT on £1m	270

Similar rules apply for:

- assets qualifying for Agricultural Property Relief, and woodlands, and
- overseas assets which are exempt from IHT as 'excluded property.'

One has to question how fair this is. Anyone who has tried to fund a business will understand that banks want security in the form of a charge on the owner's house. This is normal commercial practice and not, as HMRC seems to have concluded, a 'scheme' for tax avoidance. Others who might be affected include anyone who has looked to protect the value of their home from IHT by extracting equity and investing in BPR assets. They will now need to review the effectiveness of this planning.

Also potentially affected by this proposal (together with the change below), are people who currently hold UK property through an offshore company. Some may be forced to extract their UK property from the company to avoid the new annual tax on companies that hold UK residences, leaving them exposed to UK IHT on the property.

Other changes

Under a related proposed change, the draft legislation only allows a deduction for liabilities where they are either:

- actually repaid from the estate's assets, or
- where it can be demonstrated that there is a commercial reason for not repaying the liability and it is not part of a scheme or arrangement to obtain a tax advantage.

A commercial reason would include situations where an independent third party would not require the loan to be repaid. An obvious target is the claimed IHT benefit from many offshore trust 'schemes' where a debt is likely to be written off after death.

This places yet another administrative burden on the executors of an estate, even where there has been no aggressive avoidance. The legislation does not stipulate a time frame in which to prove the loan is repaid but it seems that where the commerciality cannot be demonstrated, no IHT forms can be submitted claiming a deduction until the loan is actually repaid. This might cause cash flow problems for the estate and delays in winding it up.

If the proposed legislation is implemented in its current form, it will apply to deaths occurring on or after the date of Royal Assent of the Finance Bill 2013, scheduled to be mid to late July 2013. It is hard to class the above scenarios as 'tax avoidance schemes' and the legislation seems more wide-reaching than implied in the Budget. Is this yet another example of 'stealth taxes'? LF

If you are concerned about how these new rules will affect you, or would simply like to understand your own exposure to IHT, please speak to your contact partner.

ENTREPRENEURS – RELIEF IS AT HAND

By Clare Munro

Entrepreneur with a business to sell? You need to think ahead to ensure your structure is in shape to maximise the tax relief.

Over the last 30 years, UK governments of all stripes have recognised the contribution of entrepreneurs in growing our economy, combating unemployment and funding public expenditure. They know that growing a business is hard and frequently involves risk and sacrifice on the part of the owner, so various sweeteners have been offered in the form of tax relief.

Currently a key relief is the Entrepreneurs' Relief from capital gains tax which reduces the rate of CGT from 28% to 10% when an entrepreneur sells up. The relief isn't unlimited: it applies to gains up to £10m so has a value in tax terms of £1.8m, i.e. the 18% difference between 28% and 10% on £10m. However, it still provides substantial and welcome shelter for many entrepreneurs who have invested time, money and energy into a business and may not have been in a position to fund a pension scheme as well.

But relief isn't automatic and no-one anticipating a sale should simply assume that it will apply. Like most good offers it comes with terms and conditions, most of which need to be met for 12 months before the date of sale. If you're intending to sell in the next few years it therefore makes sense to look at the business and the holding structure so that, come the sale, you can be confident that you'll get the relief.

For a start you need to be operating a trading rather than an investment business. Trading companies that also happen to hold investments can be caught out here and a timely transfer of the investments could make the difference between qualifying or not. Care is required to ensure that the asset transfers don't themselves result in a tax charge. Also, shareholders usually need a minimum holding of 5% in order to qualify, so, it may be that relief can be optimised by shifting shareholdings to ensure that all holders get over the threshold. There are real opportunities here too. Simply splitting shares between a husband and wife couple rather than leaving them all in the husband's name would double the relief, giving them another £1.8m to spend in retirement.

However, there are also traps. Businesses with multiple stakeholders may face a genuine difficulty in getting to a point where all shareholders have at least 5%. For them, operating the business as a form of partnership may be a better solution as, strangely, the 5% rule doesn't apply here. There is also a trap for trusts. Where a trust holds shares in a trading company, the trustees will only be eligible for Entrepreneurs' Relief if the trust beneficiary personally holds at least 5%. Too often this isn't the case – after all, the idea of the trust was to protect the asset from, amongst other things, the beneficiary!

Most of the problems with Entrepreneurs' Relief can be avoided and the opportunities that it gives can be accessed, but the 12 month qualifying period means that you are unlikely to reach the best tax position on disposal unless you've given it some thought at least a year ahead. At Lubbock Fine we recommend a review of the accounts and business ownership structure for any client where a sale is in prospect in the next five years. This gives us a chance to identify any issues and design a solution to get the best out of the reliefs available. LF

VAT – THE DEVIL IS IN THE DETAIL

By Andrew Rimmer, VAT consultant

HM Revenue & Customs (HMRC) is keen to close the 'The VAT Gap' – the difference between the VAT that the Government would collect if every business was fully compliant and actual receipts. The latest estimation of the VAT Gap for the fiscal year 2010-2011 was £2.8 billion.

With the VAT Gap in mind, HMRC introduced its VAT Compliance Strategy in 2003 which deals with how HMRC addresses what it calls 'ever-changing risks' to VAT revenue. The two fundamental tenets of the strategy are that businesses declare the 'right amount of tax' and pay it at the 'right time'.

All HMRC VAT assurance is aimed at securing additional revenue and penalising errors. Errors (and penalties) can be both for an absolute loss of VAT and for a mistaken time of payment.

But, what is the right amount of tax and when is the right time to pay it? In HMRC's view it seems that the right amount of tax is the VAT take with full compliance. But, the correct 'right amount of tax' is actually computed from a whole range of variables.

Similarly, the right time to pay the VAT depends upon a range of factors including whether the supply is one of goods or of services and, if services, whether the supplies are 'continuous' in nature, the business's normal invoicing routines and whether the customer has paid anything in advance of the supply taking place.

Because VAT is a transaction tax, fully understanding a transaction from a VAT perspective can lead to major savings. For example, I recently obtained a refund of more than £100,000 that hadn't been due from a business. They had misinterpreted the "Place of Supply of Services" rules, and this had been an absolute loss for them.

So the two key questions arising are: (a) what businesses are classed as high risk and (b) where do the potential opportunities for savings arise? From both HMRC's perspective and for taxpayers finding opportunities, high risk businesses are enterprises transacting business-to-consumer (B2C) where VAT 'sticks' with that consumer i.e. they cannot reclaim the VAT. This extends to all multi-channel retailing and downloadable products such as games and podcasts and telecommunications and broadcasting.

VAT also sticks in the exempt sector where the business incurs VAT to support its activities but it is unable to reclaim it. Exempt activities include certain land transactions, finance, insurance, health and welfare, education, sports competitions, burial and cremation, certain subscriptions, fundraising events and cultural activities.

Businesses that make both exempt and taxable supplies must use a partial exemption method to attribute their input VAT and only reclaim that proportion that relates to the taxable supplies. Therefore, where the business designs or adopts a method that maximises input tax recovery, HMRC will always review it in an effort to reduce its effect.

Whilst HMRC will respond to errors that are identified in all businesses, they concentrate their assurance mostly on the following generic situations, but this list is not exhaustive:

- Where mixed positive VAT rates apply e.g. adults' and children's clothes, food and beverages;
- Construction services at the zero-rate, 5% and 20% rates;
- All partially exempt businesses where exempt and taxable supplies are made e.g. property investment comprised of residential and commercial buildings;
- Where 'non-business' activities (grants and donations) and business activities are carried on by charities and other third sector enterprises;
- Where businesses engage in international transactions such as importing and exporting goods and providing services to clients in other European Union (EU) countries and outside the EU;
- All B2C supplies (retail and all consumer businesses); and
- 'Agency versus principal' relationships e.g. businesses recruiting staff for VAT-exempt users.

VAT is all about the detail of the transactions; understanding that detail is vital to ensure against overpayment and discover if savings are to be unearthed. All businesses can benefit from a review of their VAT position as both absolute and cashflow savings can be found, as in the example given above. Taxpayers should never just accept HMRC's arguments and instead question HMRC's assertion of what the right amount of tax is and when the right time to pay it crystallises. LF

If you would like help or assistance with any VAT matter, please speak to your contact partner or to Andrew Rimmer who can be contacted on andrewrimmer@lubbockfine.co.uk.

CAPITAL ALLOWANCES – MISSED OPPORTUNITIES AND FURTHER COMPLEXITY

By David Nutt

Owners of commercial property have significant opportunities to save tax by maximising capital allowances claims. Changes to the rules over the next year will affect new purchases, but for existing properties a detailed review of the position can often yield extra allowances, tax savings and refunds.

Capital allowances are tax allowances on certain types of expenditure. The most common types of capital allowances are plant and machinery allowances which can be claimed for commercial property on a broad range of assets including:

- Electrical systems
- Heating and air conditioning systems
- Lifts
- Hot and cold water installations
- Signage
- Demountable partitions
- Alteration works incidental to the installation of plant and machinery
- Furniture

Capital allowances opportunities mainly exist for two types of commercial property expenditure:

- Acquisition of a second hand commercial property
- New capital expenditure, e.g. new build, extensions, refurbishments and fit outs

Before capital allowances can be claimed they must first be placed into a pool. There are generally three types of pool:

- **Main Pool:** This includes general plant and machinery and is claimed on an 18% annual writing down allowance on a reducing balance basis.

- **Special Rate Pool:** This includes integral features (important to note: after 1 April 2008 for the purposes of corporation tax and 6 April 2008 for the purposes of income tax), thermal insulation and long life assets. This is claimed on an 8% annual writing down allowance on a reducing balance basis.

- **Single Asset Pool:** This includes short life assets and assets that qualify for special allowances.

When incurring new capital expenditure (e.g. new build projects), if an approved item of energy efficient plant has been installed, it may be possible to claim Enhanced Capital Allowances (ECAs) which attract a 100% first year allowance.

The valuation of capital allowances ideally requires a combination of surveying and tax expertise.

The changes

The Finance Act 2012 includes the following key capital allowances changes which apply from 1 April for companies and 6 April for income tax purposes:

- **Fixed value requirement**
  On acquisition of a second hand property, if the seller is required to bring in a disposal value for capital allowances (i.e. they have claimed capital allowances), in order for the purchaser to claim capital allowances both parties must enter into a fixed value agreement.

- **What if the seller has not claimed?**
  If the seller is not required to bring in a disposal value for capital allowances (i.e. the seller has not claimed or is a non-tax paying company such as a charity or pension fund), then the purchaser must obtain a written statement from the seller confirming that the fixed value requirement has not been met and is no longer capable of being met.

FROM 1 JANUARY 2013 (TO BE INCLUDED WITHIN THE FINANCE ACT 2013)

- **Annual Investment Allowance (AIA)**
  Increased from £25,000 for two years, with complex transitional rules. This increase is good news and will mean that immediate tax relief may be claimed on up to £250,000 of qualifying plant and machinery expenditure within each relevant chargeable period.

- **Pooling requirement**
  If a purchaser acquires a property after April 2014 and the seller is entitled to claim capital allowances on the relevant assets but has not done so, the purchaser cannot claim capital allowances.

Therefore, after April 2014, capital allowances will be lost forever if the current owner has not pooled capital allowances before disposal.

Opportunities

- **Historical review:** There is currently no time limit on how far back you are able to review historical commercial property expenditure. Any additional capital allowances identified can be claimed in a current or open accounting period which may result in a tax refund from HMRC.
  Key action: Review historical acquisitions of second hand properties and enhancement expenditure.

- **Integral features:** The new rules apply to capital allowances that the seller is entitled to claim. Therefore, in many instances where the seller owned the property before April 2008, he or she would not have been entitled to claim integral features. In these instances the purchaser will have the opportunity to claim additional integral features which fall outside the scope of the fixed value and pooling requirements.
  Key action: Identify unclaimed additional integral features on current and future property investments.

- **Acquisition/Disposal**: Before considering a future acquisition or disposal, early capital allowances advice at the heads of terms stage can save a taxpayer a significant amount of money. For example, on acquisition, a low capital allowances election figure (S198) should ideally be resisted.
  Key action: Seek specialist capital allowances advice prior to acquisition/disposal of commercial property.

These changes will make claiming capital allowances in the short term more complex and difficult. However, the key message is that anyone looking at a property purchase now should be getting proactive advice at an early stage. For those with existing properties, a review is always advisable to ensure that all available claims have been made. LF

For further details please speak to your contact partner or email our capital allowances consultant David Nutt - davidnutt@lubbockfine.co.uk.

THE RETURN OF D'SOUZA AND DE SOUZA

We are delighted to welcome back two former Lubbock Fine people. They are Sharon D'Souza and Simon de Souza who are not related and had never previously met.

Many of our clients will remember Simon de Souza who originally trained with us, qualifying in 2010. He's spent the last 18 months working elsewhere but we're glad to say that he returned to the fold in May 2013. Simon works in the audit department and specialises primarily in the legal and investment property arena.

Perhaps fewer of our clients will remember Sharon D'Souza who left the firm in 1991 to join a client's family office. After 12 years there, she took up a variety of other roles, re-joining the firm in April 2013 to head up our private client family office service proposition.

Welcome back to both of them and we're sure that all of our clients will join us in wishing them the very best for a happy and successful future with us. LF

Hearty congratulations go to Bhav Grewal, David Twambley, Owen Watts, Jerome Dussard-McFarlane, Tony Rooke, Charlotte Holt, Rebecca Lindsay, Simon de Souza and Mark Winn-Smith.

THE INTREPID LUBBOCK FINE TOUGH MUDDER TEAM

Something gruelling for charity

Over the May Day bank holiday weekend, a team of nine Lubbock Fine people participated in the Tough Mudder challenge. Tough Mudder is a hardcore, 10-12 mile obstacle course designed by the Special Forces to test all-round strength, stamina, determination and camaraderie.

At 09.20 the challenge started with an ice bath and 15-foot jump. Soaking wet and freezing cold, they battled on through electric shocks, muddy tunnels and neck-high pools of mud. Somehow, they all completed the course within four hours – bloodied, bruised but not beaten.

Hearty congratulations go to Bhav Grewal, Charlotte Holt, David Twambley, Jerome Dussard-McFarlane, Mark Winn-Smith, Owen Watts, Rebecca Lindsay, Simon de Souza and Tony Rooke.

The team is fundraising for Macmillan Cancer Support so if you haven't yet donated and would like to do so, please go to www.justgiving.com/LFtoughmuddertroop. LF

ALAN CUSHNIR – 1938 TO 2013

We are very sorry to report the untimely death of former Lubbock Fine partner, Alan Cushnir.

Having previously been a partner in Walker Newman Samuels, Alan joined us in 1972 when we acquired that firm. During his time with us he acted for many of the firm's clients and was instrumental in bringing our landmark landlord and tenant VAT case to the European Court in 1993.

Alan will always be remembered as a cheery, enthusiastic and gentlemanly member of the firm. He always worked diligently whilst also managing to maintain his many outside interests and undertaking a great deal of voluntary work.

Devoted to his family, Alan is survived by his wife Denise, his three children and grandchildren. LF

LubbockFine
Chartered Accountants

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Russell Bedford House, City Forum,
250 City Road, London EC1V 2QQ
Telephone 020 7490 7766. Fax 020 7490 5102
www.lubbockfine.co.uk

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Editorial information:

Edited by Nicola Coleman. Emails or letters to the editor are welcome.

nicolacoleman@lubbockfine.co.uk | marketing@lubbockfine.co.uk

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