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## Debt Arrangement Scheme (DAS)

### “A Creditor’s Perspective”

**A**s a business you may be receiving proposals to approve a “Debt Payment Programme” (DPP) under the Debt Arrangement Scheme (DAS) on behalf of one of your debtors.

The Scottish Executive introduced the DAS as a “diligence stopper” for multiple debts, without having to go to Court. The Scottish Parliament approved the Debt Arrangement and Attachment (Scotland) Act 2002 and thereafter approved the detailed rules set out in the DAS (Scotland) Regulations 2004.

The idea behind the scheme is that most people want to pay what they are due, but some can only do this if they are given time. It is seen as debt “management” as opposed to debt relief. If the DPP is approved then the debtor is free from the threat of arrestments, attachments, other diligences and

bankruptcy. The creditors would then get a pro rata payment towards their debt. It is likely you will be asked to waive all interest or at least freeze interest.

As a creditor there are a few things to bear in mind before approving a DPP. If you wish to respond to the DPP you must do so within 21 days. The 21 days start on the day after the date of posting. If you do not reply, you are considered to have agreed to the proposal. However, you may wish to object to the DPP because, for example, you know that the debtor owns land or buildings or other assets. A DAS only deals with “surplus income” of the debtor, not assets. In these cases, a more appropriate route may be to take direct action against the debtor, before the DAS is approved.

“... a hard core of offenders who regularly or deliberately fail to pay the minimum wage ...”

## Debts due to H. M. Revenue & Customs

**F**ollowing the appointment of Administrators, and cessation of trading of MG Rover in the English Midlands, H. M. Revenue & Customs issued a notice which should be of general application to all businesses.

HMRC stated that they will respond “constructively and speedily” to requests from businesses affected by debt issues. They will for example consider applications for additional time to pay outstanding PAYE and VAT. “Time to pay arrangements” will be considered where appropriate, and individual factors relating to the business and other matters outwith the applicants

control will be taken into account. In particular where a “key trading partner” (for example a major large customer), has collapsed, H. M. Revenue & Customs have stated that they will work to develop an integrated response to debts due in respect of various taxes.

Our advice if you are experiencing cash flow difficulties is that you contact us. There are a range of measures which we may be able to assist with and these will almost certainly include making proposals to H.M. Revenue & Customs. It is always advisable to be proactive as opposed to “keeping your head in the sand” in times of financial difficulty.

## SDLT and partnerships

**S**tamp Duty Land Tax (SDLT) replaced stamp duty on UK land transactions with effect from December 2003, so SDLT is generally payable when a person (including a partnership) buys land. That’s the easy bit.

Since 23 July 2004 SDLT applies to certain other transactions affecting partnerships and land.

SDLT may now be payable when a chargeable interest in land is transferred into a partnership by a partner or someone connected with a partner, or out of a partnership in similar circumstances. SDLT may also be due where an interest in a land-owning partnership is transferred to a partner or someone who becomes a partner as a result of the transaction, where there are ‘arrangements’ in place for the transfer and value passes in respect of it. For this purpose ‘arrangements’ are defined as including any scheme, agreement or understanding, whether or not legally

enforceable, and thus have a very wide meaning.

The legislation is obscure, and so also is the guidance issued by HM Revenue and Customs. However, the guidance contains warnings. For example, where consideration is paid for the transfer of an interest in a partnership, the actual consideration may have to be disregarded and the SDLT based on the market value of the underlying partnership property transferred. Where land owned by a partner or someone connected with a partner starts being used for the purposes of the partnership business, there may be a deemed transfer into the partnership for SDLT purposes even if legal ownership does not change. Where all the partners are connected (e.g. within one family) and no consideration is paid, there may be no exposure to SDLT.

Some situations in which possible charges to SDLT could arise might be apparent to us from your business accounts and known changes in

### Government Crackdown on National Minimum Wage Offenders

**A new approach to tackling non-payment of the National Minimum Wage was recently announced by the Government. For the first time, specific employment sectors will be targeted for enforcement. This new approach will focus initially on the hairdressing industry as a pilot and, if successful, will lead to other low-paid sectors being targeted in the future.**

A new criminal investigations strategy which aims to bring to book a hard core of offenders who regularly or deliberately fail to pay the minimum wage is also being introduced. HM Revenue and Customs are now beginning to identify employers who will be targeted for prosecution.

From October 2005, the National Minimum Wage rates are set at:

Main (adult) rate – workers aged 22 and over £5.05 an hour

Development rate – workers aged 18 - 21 £4.25 an hour

Young workers rate\* – workers aged 16 and 17 £3.00 an hour

\*16 and 17 year old apprentices are exempt from the young workers rate.

Further information may be obtained on 0845 6000 678

partnership arrangements, but others may not. Until the dust settles and the scope of the new charges becomes clear, we suggest that you tell us of any unusual transactions (whether undertaken for payment or not) or changes in business practice which affect your partnership business and any land used by the business or connected with it.

“ ... The objective of the tax is to plug gaps in the inheritance tax ... legislation ... ”

## Dividend Payments by Small Companies

**If your company has taxable profits of less than £50,000 and dividends are paid then the company may be affected by the “non-corporate distribution rate” of corporation tax.**

This is a piece of anti-avoidance legislation which took effect from 1 April 2004 aimed at reducing or eliminating the benefit of the nil percent rate available on the first £10,000 of taxable profits. Dividends paid to another company are not affected.

Where a company is caught by the legislation then the rate of corporation tax on the part of the profit distributed by way of dividends to individuals is

taxed at 19%. The effect of the legislation is best illustrated by an example of a company with taxable profits of £40,000.

Corporation tax at 19%	£7,600
Less: marginal relief	475
(£50,000 - £40,000) x 19/400	
Corporation tax due	£7,125
Underlying rate	
£7,125/£40,000	17.81%

If the company did not pay a dividend then this is the corporation tax which would be payable. If, however, the company pays a dividend to an individual shareholder of £20,000 then the corporation tax payable is computed as:

Non-corporate distribution	
£20,000 @ 19%	£3,800
Remaining profits @ 17.81%	3,562
	£7,362

The payment of a dividend has resulted in additional corporation tax of £237 being payable. The effect of this legislation diminishes as profits increase towards £50,000. The worst extreme is where profits are £10,000. If a dividend was not paid then the corporation tax liability is nil. If a dividend of £10,000 is paid then the corporation tax liability is £1,900.

Companies with taxable profits above £50,000 are completely unaffected by the non-corporate distribution rate of corporation tax.

## Pre-Owned Assets Tax

**A new form of income tax, pre-owned assets tax, became effective on 6 April 2005. The objective of the tax is to plug gaps in the inheritance tax gifts with reservation legislation. If you gift an asset but continue to benefit from it then the gifts with reservation legislation would mean that the asset is treated as part of your estate, for inheritance tax purposes, on your death. The most common example would be giving away your house but continuing to live in it rent free or at a reduced rent.**

Schemes to get around the gifts with reservation rules have been devised and, rather than changing the inheritance tax legislation to catch these, the government has chosen to introduce an entirely new tax. This will apply where you are still able to enjoy certain types of property which you have owned at some point after 17 March 1986 but you have given it away and managed to

avoid the inheritance tax reservation of benefit rules.

The pre-owned assets tax applies to land and buildings, tangible moveables (such as furniture and paintings) and intangible property in certain circumstances.

The tax can bite in unexpected circumstances. For example, if you gave a sum of money to one of your children after 17 March 1986 and a house was purchased with this money, a tax charge will arise if you start to live in the house.

Where a transaction is caught, an income tax charge arises on the difference between the annual rental value of the asset and any amount which you pay for its use. The measure of the annual rental value is slightly different depending on whether the asset is land, tangible moveables or intangible assets.

There is a de minimis exemption where the sum of all of the annual rental values is no more than £5,000.

It is possible to opt out of the pre-owned assets legislation by opting back in to the inheritance tax gift with reservation rules. The election must be made by 31 January following the tax year in which the income tax charge would first arise. While each case will have to be considered on its own merits, elderly people may be better to pay the income tax charge while an election may be more beneficial for younger people who would otherwise be faced with suffering the pre-owned assets income tax charge for many years into the future.

The most immediate point is to consider all gifts which you have made since 17 March 1986 and whether you are still using the assets and not paying a market value rent. Similarly, if you gave cash, do you have the use of any asset owned by the person to whom you gave the cash?

This is a complex area and you should contact us if you would like to discuss your position further.

“ ... The Scottish Parliament has voted to ban smoking in all enclosed public places ... ”

## Recovery of VAT on Road Fuel

**M**any businesses operate a system of paying a mileage rate to employees for business miles travelled. This can often provide a tax efficient means of reimbursing employees for the use of their own vehicle in connection with their work.

A further incentive is that the business as employer is able to recover VAT on the mileage rate paid using rates negotiated with HM Revenue & Customs or tables published by motoring organisations. These are based on the fuel element of the mileage rate and are usually in the region of 10p to 12p per mile.

The news is that the European Court of Justice has ruled that the UK practice of allowing VAT to be recovered on mileage rates contravenes the EU Sixth VAT Directive. This is

apparently because the business, as registered trader, is not in possession of a VAT invoice, and also the original supply of the fuel was to the employee and not to the business.

So far UK Legislation has not been changed, and therefore businesses can continue with the arrangement of claiming VAT on mileage rates paid. However, a change is expected in the near future. It is important that you don't overclaim input VAT, and you should contact us if you would like advice on the best procedure to follow.

## Employment Disputes – New Rules

**Y**ou will be aware of the increasing complexity and volume of Employment Legislation in recent years. The Dispute Resolution Regulations 2004 (which stem from the Employment Act 2002) came into effect in October last year. These pieces of legislation introduced statutory Dismissal and Disciplinary Procedures and also a statutory Grievance Procedure.

It has been good practice for a number of years to have in place and publish disciplinary procedures and grievance procedures. The main difference now is that these must fall into line with a statutory framework. The intention is to try and reduce the number of claims from employees going to an employment tribunal.

When employers wish to dismiss an employee, the employer must write to the employee outlining alleged misconduct and stating the reasons why dismissal or other disciplinary action is being considered. The employee must be invited to a meeting and the employee must be offered a right of appeal.

For grievances, the new legislation sets out a standard grievance procedure and again this details various steps, beginning with the employee writing to the employer with details of his or her grievance. The employer must ask the employee to a meeting to discuss the grievance and, as with the disciplinary procedure, an appeal procedure must be in place.

## Smoking Ban - The effect on employers

**Early next year, the law on smoking changes. The Scottish Parliament has voted to ban smoking in all enclosed public places because of the health risks associated with passive smoking. This new law comes into effect on 26 March 2006 and applies to businesses, workplaces, clubs, pubs and restaurants.**

Employers will have to display approved No Smoking signs in prominent places for all employees, customers and visitors. They will also have to make reasonable efforts to ensure staff, customers and visitors are aware of the smoke-free status of the premises.

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