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NEWSLETTER JANUARY 2007

DISCLOSURE OF COMPANY DETAILS ON WEBSITES AND EMAILS

Those clients who are limited companies should be aware of a recent change to the Companies Act 1985, details of which are set out below.

As our corporate clients will no doubt be aware, companies have to disclose certain details on their stationery and, in particular, on their letterheads, orders and invoices. These include the company's name, its country of registration, the company number and the registered office.

Statutory Instrument 2006 No. 3429 "The Companies (Registrar, Languages and Trading Disclosures) Regulations 2006" which came into force on 1 January 2007, requires the following information to be displayed on a company's website and any other electronic document (which will, in the main, relate to emails):

- The company name
- The country of registration
- The company number
- The registered office

It is an offence, punishable with a fine, if a company does not conform to the requirements of the new legislation.

The above legislation will be reproduced in the new Companies Act 2006 when those sections of the Act are brought into force by statutory instrument at some time in the future.

Advice:

Ensure that, if you are a limited company, you are adhering to the new regulations.

Whilst we are on the subject of disclosures on company stationery, it may be worth while having a quick look at your company's existing paper format stationery. All company letterheads, orders and invoices must have the information set out above clearly displayed.

You do not have to display the names of the company's directors but if you display one name you must display them all.

If your company uses a trading or business name then you must display this name in full on your letterheads, orders and invoices and in addition you must still give the full name of the company.

If your company's postal address on your stationery is also its registered office, you do not have to print the words "Registered Office" next to the address. If, however, you show a postal address that is not the registered office address, you must show the registered office address with the words "Registered Office" next to it.

It is acceptable to abbreviate the word "limited" in a company name to "ltd".

You do not have to display the company's VAT number on letterheads but you must do so on any invoices.

SERPs – WERE YOU WRONGLY ADVISED?

Cast your mind back to the late 1980s. Were you advised to opt out of the Government's Serps scheme (State Earnings Related Pension Scheme)? If so, try to recall the reasons given to you for opting out. You may have been advised that you would receive substantial rebates which you could then invest in a personal pension. Now, think again – were the rebates substantial or do you think you were wrongly advised?

The consumer magazine Which? is mounting a campaign to support those who believe they were wrongly advised to opt out of Serps (now known as S2P). It has held talks with the Financial Services Authority (FSA) to try and establish guidelines for those who wish to complain about incorrect advice.

In its survey Which? found that 70% of people questioned were worse off by opting out of Serps. Although it is admitted that there are some who benefited from opting out, according to Which? the majority did not and what was worse, they did not realize they could be worse off when they were advised to opt out.

At present, talks are still in progress with the FSA in an attempt by Which? to agree a complaints procedure system and also as to how compensation could be computed.

The bad news seems to be that the FSA is not convinced that there has been mis-selling, although it is still ready to listen to arguments to the contrary.

The FSA has produced a factsheet on SP2 "The State Second Pension – should you be contracted out?" which can be found at:

http://www.money.madeclear.fsa.gov.uk/pdfs/contracting_out.pdf

In this factsheet the FSA states as follows:

"Independent analysis that has been done for us suggests that most consumers are likely to be financially worse off by contracting out or staying contracted out during 2006/07. This position may change in future years.

By contracting out or staying contracted out, you are accepting the risk that your pension income could be lower than if you had stayed in S2P. If you don't want to accept this risk, contracting back in is likely to be the best option for you.

You should make sure you review your decision every year. The decision you make this year will not affect past years in which you were contracted out."

A BAD START TO THE NEW YEAR FOR SOME

As our readers will be aware, the Bank of England caught most of us out by announcing a surprise increase of a quarter point in interest rates at the beginning of January. The rate now stands at 5.25% and many analysts and other financial commentators are of the opinion that a further quarter point increase is not too far away. This latest increase is the third in the last few months with previous rises taking place in August and November last year.

The reasons for the increase in rates is the familiar one. The Bank was concerned that inflation was starting to get out of control and so it was necessary to curb spending. Inflation was running at 2.7% when the Bank announced the increase but the latest inflation figure up to and including December last year has increased still further, thus fuelling speculation of another increase in interest rates.

Any increase in interest rates will hurt borrowers, but those who will feel the pinch the greatest will be homeowners who have a mortgage which is not a fixed rate mortgage. On average those with a mortgage of £100,000 will face an increase of £17 a month or £204 a year. If one takes into account that this increase will have to be found out of taxed income, then each person will have to earn an additional £262 if he or she is a basic rate taxpayer or £340 if a higher rate taxpayer.

The problem of curbing inflation is of course a tricky one, to say the least, as in order to fund the increased mortgage payments employees will be seeking an uplift in salaries, thus stoking inflation still further.

For those who are facing increased payments it is not too late to look at the many fixed-rate mortgages that are on the market. For those who are contemplating taking out a mortgage we would advise that budgets are looked at closely, especially as a further increase may be on the way. The good news is that many commentators believe that a rate of 5.5% will be the maximum for the rest of this year and some feel that the present rate is the peak.

SELF ASSESSMENT – COMPLETE A RETURN OR YOU MIGHT LOSE YOUR PENSION RELIEF

A worrying statistic has emerged in relation to self assessment returns. Apparently HM Revenue & Customs have been telling a number of taxpayers (some one million!) that because their tax affairs are straightforward, there is no requirement for them to file a self assessment return. At first sight this seems like good news as these returns are not the easiest to complete. But be careful - if you are a higher rate taxpayer and you pay pension contributions, you could be losing out.

The reason is quite simple. If a person pays a pension contribution he or she will receive 22% tax relief (ie at the basic rate) on these contributions, such amount being added to their pension. But a higher rate tax payer is entitled to 40% tax relief on these contributions and the only way you can claim back the difference between the basic rate and the higher rate, ie 18% is by completing and filing a self assessment return. (Unless you are in a company pension scheme in which case the difference between the rates is automatically dealt with through the PAYE system.)

The statistics involved are alarming as it is estimated that of the 3.25 million higher rate taxpayers in the UK, approximately 1.2 million pay into a personal pension. It is estimated that about half a million of such individuals have not claimed the relief to which they are entitled.

BUY-TO-LET: WILL INCREASED INTEREST RATES BE A GOOD OR A BAD THING?

Those individuals who have purchased property with the intention of letting it might, at first sight, be alarmed at seeing the third increase in bank interest rate since August of last year. This reaction is a natural one as there could well be a reduction in the profit available for landlords who have taken out a mortgage to purchase the property, as the cost of the mortgage will increase but the rental income from the property may not. In addition, with the increase in rates there may be a levelling out in the rate at which house prices are escalating, which in turn may mean lower capital profits for landlords if and when they come to sell the property.

But all is not doom and gloom in the buy-to-let market. As mortgage rates increase there will be fewer and fewer individuals who can afford to start on the property ladder and who instead may opt for renting property, thus enlarging the potential customer base for those in the buy-to-let market. In addition, it is easier for those with available resources or access to mortgages to purchase properties as prices fall or, at the least, level out.

THE ENDURING POWER OF ATTORNEY – A TABOO TOPIC OR TIME FOR ACTION?

When we are relatively young few of us consider the problems that may arise in old age. And when these problems are recognized it is often the physical ones that are considered and not the problems that could affect our minds.

If, as is inevitable in many cases, we lose our mental capacity due to the onset of old age, we may no longer be able to control our financial affairs. This can cause problems for both the sufferer and those who care for that person, usually close family. This is because, if an application is made to the Court of Protection by the family, until the Court gives its approval, which can sometimes take many months, it will hold the elderly person's funds on their behalf. Once approval is given, the applicant(s) will be appointed the receiver and will be empowered to handle the individual's affairs.

As indicated above, the process of applying to the Court can take time and sometimes it is important to act quickly, especially in relation to an individual's finances. For this reason, consideration should be given to creating an Enduring Power of Attorney (EPA). As the name suggests, this document gives a person the power to act as attorney for the elderly relative should it become necessary. Provided that the EPA is created whilst the elderly person is of sound mind, it need not be acted on until that person's mental state starts to deteriorate.

Once mental capacity has been lost the person named in the EPA makes the required application to the Court and has to inform any person named in the EPA that he or she is going to register the EPA. This gives such persons the right to object to the EPA being registered. This process is much simpler and quicker than applying to the Court of Protection.

Readers should note that the present law that governs the EPA is due to be changed later this year by the introduction of the Lasting Power of Attorney (LPA). The new LPA will take two forms:

- 1 the finance and property LPA that will control a persons' finances and property; and
- 2 the health and personal welfare LPA that will deal with matters such as a person's daily care and medical treatment. This will include such matters as residential home care.

ⁱ *The articles in this newsletter are of necessity summaries of the topics covered. The publisher has taken all due care in the preparation of this publication. No responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication can be accepted by the authors or the publishers. The publisher accepts no responsibility for the content of any material provided by third parties or for the content of any hypertext site referred to in this publication. The Publisher accepts no responsibility for the content of any website of other document referred to in this publication.*