

CorporateBites

Updating you on company and commercial issues



Against a backdrop of the worst economic slowdown since the Second World War and increasing numbers of company insolvencies (up 56 per cent in the first quarter of 2009 compared with the same period in 2008), all eyes were understandably focused on Alistair Darling as he presented the 2009 Budget. While acknowledging the difficult job faced by the Chancellor, criticism of the Budget has come from all sides (including his own). Perhaps the most telling criticism was that the Budget represented “a triumph of hope over experience”.

Two of our topics this month focus on subjects coming out of the 2009 Budget. The first takes a practical look at tax planning measures that companies ought to be giving serious consideration to sooner rather than later. The second addresses the long-awaited top-up trade credit insurance scheme intended to support companies with cashflow difficulties.

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Post Budget actions?

Following the 2009 Budget and the recent publication of the 2009 Finance Bill, tax planning should now be towards the top of any agenda. Topics for consideration sooner rather than later include:

- accelerating the payment of dividends and salary in this tax year to avoid the higher income tax (50 per cent for high earners) and national insurance (NI) charges (up 0.5 per cent) effective from 6 April 2010;
- alternative schemes to deliver bonuses in the form of capital (taxed at 18 per cent) to avoid the higher rate of tax and NI; and
- delaying the receipt of dividends from overseas until 1 July 2009 when most dividends received by a UK company will be exempt from tax.

For companies worried about meeting their future tax liabilities, HMRC have announced that they are prepared to spread the



For further information, contact [Deborah Clark](#).

payment of tax over a period of up to six months. Also if you are expecting a loss in the current period that would be carried back to reduce a tax liability now due then that tax liability can be reduced to take account of the expected loss under the business payment support system.

New “top-up” trade credit insurance scheme

Businesses facing cuts in the level of available credit insurance cover or struggling to gain cover can make use of a new £5 billion government scheme. The scheme has been set up in response to concerns that reductions in the availability of trade credit insurance cover is affecting businesses' working capital facilities and increasing the pressure on suppliers to shorten payment terms and demand up-front payment.

Under the scheme, which will run from 1 May 2009 until 31 December 2009, businesses will be able to purchase six-months' top-up trade credit insurance cover (on the same terms as the underlying cover) if credit limits on their UK customers are reduced.

The scheme is open to all eligible businesses trading in the UK which hold a whole turnover trade credit insurance policy and have suffered a reduction in cover from 1 April 2009. Top-up cover can be purchased via the existing insurance provider who will administer the scheme on the Government's behalf.

Whilst the scheme has been welcomed it has faced criticism for being long overdue (France adopted a state guarantee scheme protecting companies unable to get cover elsewhere last year). It has also been criticised for not being available to companies that had their credit reduced before 1 April 2009 or whose credit insurance has been withdrawn altogether.

Click [here](#) for more details.



For further information, contact [Ben Turner](#).

CVAs to replace administration?

The company voluntary arrangement (CVA) is a relatively obscure insolvency procedure whose use has traditionally been overshadowed by administration. A CVA is essentially a contract between a company and its unsecured creditors which sets out the terms on which the company can continue trading. Implementation of a CVA requires the approval of 75 per cent of creditors by value, who vote on the proposal.

There are two main reasons why CVAs are likely to be used more widely in the future:

- The groundbreaking CVA proposed by JJB Sports, the troubled retailer, has been approved by creditors including the landlords of its 250 retail outlets. Under the CVA, JJB will continue trading but pay less rent and on a monthly, rather than quarterly, basis. Previous arrangements like this, such as the proposed Stylo CVA, have been flatly rejected by landlords not prepared to accept a reduced rent or rent calculated as a percentage of turnover of each store.
- The recent Budget proposes to extend the moratorium on creditor action to medium and large companies trying to restructure using a CVA, without the need for the protection



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from creditors afforded by administration.

First company prosecution under the Corporate Manslaughter Act 2007

On 23 April 2009 the CPS brought charges against a Gloucestershire-based company in the first prosecution for corporate manslaughter under the Corporate Manslaughter and Corporate Homicide Act 2007.

The prosecution is being pursued in relation to the death of an employee of the company in September 2008. At the same time it was also announced that a director of the company has been charged with gross negligence manslaughter. If found guilty of corporate manslaughter the company could be fined as much as 10 per cent of its gross annual turnover. More worryingly the director could, if found guilty of gross negligence manslaughter, face a lengthy prison sentence. Both the company and the director also face health and safety charges under the Health and Safety at Work etc. Act 1974 which also carry custodial penalties.

The prosecution sends out a strong message to organisations who risk charges being brought (and significant penalties being imposed on them) if they fail to provide a safe working environment for their employees.



For further information about the impact of this legislation on your organisation or about health and safety in general, contact [Ian Meyers](#).

TUPE does not apply to “terminal” administrations

An employment appeal tribunal has ruled that TUPE does not apply to all sales by administrators. On this view, whether TUPE applies will depend on the objectives of the administrator when appointed. In this case it was clear from the outset that continuing to trade was not viable and an immediate sale of the company’s assets was required to secure the best outcome for creditors. That put the administration in the category of “terminal” insolvency proceedings, for which a complete exemption from TUPE applies. If, on the other hand, the aim of the administrator had been to rescue the company by continuing to trade while preparing the business for a buyer, TUPE would have applied, with some modifications. That would have meant that all the employees assigned to the business being sold would have been automatically transferred to the buyer.

This decision is particularly relevant to administrators disposing of businesses or assets by way of pre-packs. Although the prospect of a TUPE-free sale is clearly attractive to the purchaser, this decision suggests that it is the intention of the administrator at the outset that is important. This will not always be easy to ascertain.

The employees have lodged an appeal to the Court of Appeal, so we may not have heard the last word on this.

For the full decision (*Oakland v Wellswood (Yorkshire) Ltd*) click [here](#).



For further information contact [Charles Pigott](#).

Shortcut – practical ICAEW guidance on surviving the downturn

The Institute of Chartered Accountants of England & Wales (ICAEW) has published a practical guide, “Eight Ways to Survive the Downturn”, to help businesses plan survival strategies and activities



which could help them in facing the current economic challenges, including managing risk and uncertainty and recognising the value of employees. The guidance can be found by clicking [here](#).

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