

## Business Growth Accountants

Strategy ~ Accountancy ~ Tax



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### April Fool



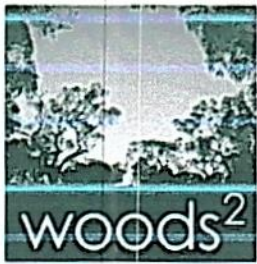
The Brown government might be facing defeat at the polls but that hasn't stopped its scorched earth policy. It is introducing a raft of measures to make entrepreneurs' lives worse come April.

From increasing the top rate of tax and hiking national insurance to new regulations on carbon reduction and whistleblowers, there is plenty for entrepreneurs to worry about from April this year. The biggest bogeys, however, are probably yet to come – particularly concerning capital gains tax.

Chris Wales, a senior managing director in the economic consulting practice at FTI Consulting, was previously a Treasury advisor in the early years of Gordon Brown's chancellorship. He was one of the architects of the taper relief regime, under which assets attracted more relief from capital gains the longer they were held and which was one of the key elements of New Labour's supposed business-friendly image. It was repealed by Alistair Darling in 2008, replaced with a flat rate of 18 per cent.

He says, "The real issue is what happens next, beginning with the spring Budget. There is a real worry that with a 50p income tax rate the 18p CGT rate will look as though it creates opportunities. It looks out of line. I don't think it'll go as high as 50 per cent but quite a few people are talking about putting it up to 40 per cent, and at that rate it chokes off the entrepreneurial spirit.

"I can't understand why people think it makes sense to tax gains on second homes and antiques at the same rate as businesses but I suspect that if CGT goes up it will do so across the board."



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Wales doesn't believe that the majority of entrepreneurs will be overly concerned by the changes to the deductibility of pension contributions due to take place next year: "They will complain about it but what they really want to do is to build up their business and sell it for a large amount, which is why most proprietors should be more interested in business taxation."

In regards to this he points out that it's not just Labour that entrepreneurs have to fear: "Osborne has talked about the deductibility of interest payments being removed. That would have a very big and detrimental effect at the small business level – so their representative bodies should be looking for clarity on this from the Tories. In general, with the spring Budget coming up and another after the election, businesspeople need to be pushing their representative bodies to make their views known now."

Wise words. But what of the immediate future? Below we present our guide to some of the most significant changes to taxation and regulation due to be implemented in April 2010.

### 50p tax rate

As from 6 April a new 50p marginal rate of income tax will be applied to earnings above £150,000. At the same time the tax rate on dividends for those with total incomes above £150,000 will increase from 32.5 per cent to 42.5 per cent – making many entrepreneurs' favoured method of remuneration less attractive.

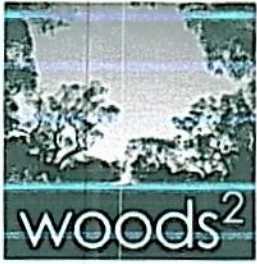
The options for getting around this are thin on the ground. As a result, accountants report that many clients are moving to pay themselves large sums before 5 April – and succumbing to pressure to bring bonuses for their top-paid staff forward into this tax year.

However, this isn't without its dangers. Chris Maddock, head of private client tax at accountancy group Vantis, says, "If you can accelerate income into this year you'll only pay 40 per cent tax – but the downside is you will have to pay the tax a year earlier, so you'll need to look at your numbers carefully."

Assuming (and this is not a safe assumption) that nothing major happens to capital gains tax in the spring Budget due later this month, John O'Mahony, North West head of tax at accountants RSM Tenon predicts, "You will have lots of accountants and lawyers looking at ways you can put reward into the capital gains tax regime." This, he acknowledges, will make an upward move in the CGT rate more likely. He also points out that the rush to squeeze as much income as possible into this year will be likely to result in a spike in the tax take next year – which will be welcome for whichever party finds itself in power.

Under the current CGT rate another option for rewarding senior staff is to introduce an equity plan. Tom McGinnis, UK head of middle market tax at accountancy firm KPMG, says, "Equity plans are a good way of locking in senior people because they have to hold them for three years before cashing out. If you're a sole shareholder you'll have to accept some dilution of your equity but you would award a different class of share with very little up-front value and no voting rights.

"The individual then pays income tax on the face value of the shares at the time they are awarded. You would probably need to set up an employee benefit trust to buy back the shares when they come to cashout – so you create an internal market."



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#### Personal allowances

From 6 April the personal allowance is to be abolished for high earners. The £6,475 allowance will be reduced by £1 for every £2 of income above £100,000 – meaning that those earning above around £112,000 will have no allowance.

However, Chris McGowan, tax partner at accountants ATF, points out that for the purposes of this calculation total income is assessed net of pension contributions. This means, he says, that by making increased pension contributions it is possible for those who earn more than £100,000 and less than £130,000 to achieve an effective rate of tax relief on pension contributions of up to 52 per cent.

We won't often say this but in this instance you should probably speak to an advisor.

#### National Insurance Contributions

Amidst the fuss about the halfpercent increase in employers' National Insurance Contributions announced for next year in December's pre-budget report it's possible to overlook the fact that we're also due a half-percentage point rise this April.

The best way for employers to mitigate this is to reduce staff's headline salaries by the use of "salary sacrifice" arrangements for pension contributions and other employee benefits.

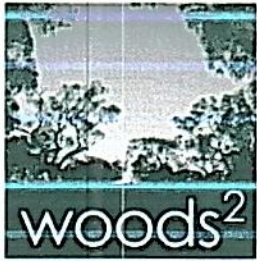
Alan Woods of Woods Squared Accountants, says, "One underused tax planning item is childcare vouchers – £55 per week can be paid by the employer towards an employee's childcare costs – as long as the childcare provider is registered."

As well as reducing employers NIC payments, salary sacrifice arrangements can also be used for employees' own tax planning purposes. Care needs to be taken here as salary sacrifice arrangements can affect employees' highest marginal rate of income tax and thus, in some cases, eligibility for higher rate relief on pension contributions.

Another word of warning: salary sacrifice arrangements aren't really a reduction of salary but rather a contractual agreement regarding the structure of an employee's remuneration. As such in many cases they count as contractual benefits and must be paid for by the employer during periods when staff are, for instance, in receipt of statutory maternity pay – which cannot legally be reduced.

#### Pensions

The headlines continue to be grabbed by the ongoing transitional arrangements regarding tax relief for higher earners. However, entrepreneurs should also be aware that from 6 April 2010 pension scheme members will no longer be able to take their benefits at age 50 – as the minimum pension age increases to 55.



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David Gleeson, a financial planning consultant at Moore and Smalley Chartered Accountants, says, “This has obvious implications, such as if you are planning on phasing benefits with a drawdown arrangement.

The new rules mean that after April you will be unable to take installments until you reach 55, unless you are already drawing your pension before the deadline.

This also creates a dilemma for someone planning to pay off a mortgage with a lump sum from their pension commencement.

“Anyone thinking they might like to take their pension benefits before 55 must act now or face this imposed delay, the worst case scenario being a five year wait for those who have just turned 50. Those affected by these changes should speak to their professional advisor as soon as possible to develop a strategy to mitigate any issues with their retirement planning.”

#### PAYE returns

From April 2010, anyone employing fewer than 50 members of staff must start filing their annual PAYE returns online, which could prove a major headache for a variety of organisations and individuals.

Hillary Griffin, senior tax consultant at Duncan Sheard Glass chartered accountants, says, “Many small businesses have already got to grips with these changes, incentivised by a range of tax-free government payments, yet there remains a core of non-business organisations that may not realise they are subject to the regulations and who may be caught cold.

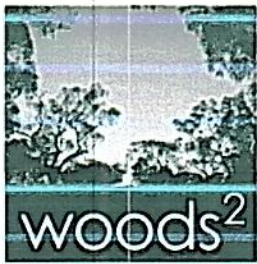
“This unwitting group includes singular employers, for example those who employ an au pair or housekeeper, and also charitable groups which may have a handful of paid staff in shops or call centres.”

#### Worldwide debt cap

The Worldwide Debt Cap, which comes into force this April, is according to Mark Stephenson, corporate tax partner at accountancy firm Deloitte, “a horrendously detailed piece of legislation”. Aimed at UK domiciled multinationals it exists to limit UK corporation tax deductions for finance expenses to no more than the gross finance expense suffered for the relevant period by the worldwide group – thus limiting relief for deductions in respect of excessive debt owed by the UK members of a group.

All large companies (those with more than 250 employees and either a turnover of greater than or equal to €50 million or gross assets on the balance sheet of greater than or equal to €43 million) that are encompassed by a gateway test (if the UK net debt exceeds 75 per cent of the worldwide gross debt, then the group falls within the debt cap rules) must complete returns.

This is the sting in the tail – the administrative burden will fall on all UK companies that fall within the gateway test, including those with no foreign operations whatsoever.



Stephenson says, "It affects all large groups with debt. They probably won't suffer a disallowance but they still have to do the calculation."

#### Carbon reduction commitment

The Carbon Reduction Commitment Energy Efficiency Scheme ("CRC") is a new UK compulsory emissions trading scheme which comes into force in April 2010.

Keith Davidson, environmental law partner at solicitors firm Pannone, says that although CRC is primarily aimed at large private and public sector organisations with a total electricity bill of more than £500,000 a year, its impact will extend to small and medium-sized businesses.

He says, "Around 20,000 UK organisations will either be full CRC participants in a cap-and-trade scheme or need to register energy data as 'information declarers'."

"In addition to paying energy bills, participants must purchase and surrender allowances for each tonne of carbon that they emit. A Performance League Table will then lead to additional financial penalties and bonuses awarded according to their energy efficiency performance". Davidson warns that many SMEs will come across CRC issues in lease negotiations and corporate transactions.

#### Information security

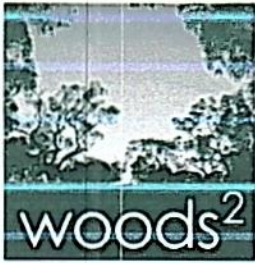
New powers for the Information Commissioner's Office (ICO), designed to deter personal data security breaches, are expected to come into force on 6 April 2010. Under the new rules businesses that lose individuals' data could face fines of up to £500,000. The ICO currently only has the power to fine firms up to £5,000 for serious breaches of the Data Protection Act.

The £500,000 figure is a maximum – the ICO says "The Information Commissioner will take a pragmatic and proportionate approach to issuing an organisation with a monetary penalty. Factors will be taken into account including an organisation's financial resources, sector, size and the severity of the data breach, to ensure that undue financial hardship is not imposed on an organisation." But for many organisations this will mean more than the previous £5,000 maximum – ten per cent of turnover is not unlikely.

Robert Guice, executive vice president of Shred-it, an information destruction company, says, "Small firms must make employee education a top priority to help them avoid unnecessary data breaches occurring as a result of human error."

"Invoices, company reports, payroll data, customer lists and even customer complaints are all highly confidential and need to be destroyed or securely stored."

However, this kind of paperwork is often simply thrown in the bin by employees who don't realise its sensitivity. In the longer term, strengthening your online security and implementing a secure document destruction programme are the safest ways to ensure all of your sensitive corporate information is secure."



Whistleblowing Under draft legislation due to come into force on 6 April 2010, Employment Tribunals will have the power to forward a claim form received by the tribunal on or after that date, or extracts from it, to a prescribed regulator where a claimant has alleged that he or she is "whistleblowing" and has given express consent for it to do so.

The good news, according to Christopher Syder, partner and head of employment at law firm Davies Arnold Cooper, is that the new procedure will enable the whistleblowing allegation to be assessed and, where appropriate, acted upon without involving the release of unsubstantiated allegations into the public domain.

However, he points out, "Employers will, no doubt, be concerned that allowing whistleblowing claims to be referred on to a relevant regulator may increase the number of spurious claims, increase the administrative burden on employers in dealing with both the employment claim and regulatory investigation, and employees' commercial settlement expectations generally.

"Whilst the Government has, in response, pointed out that a similar situation can already occur where a claimant refers such information directly to a regulator, it does accept that regulators are likely to receive more referrals once this new procedure is in place."

#### Fit notes

Traditional GP sick notes will be replaced by "fit notes" from Tuesday 6 April 2010.

The new system intends to reduce employee sickness absence whilst enabling employees with medical complaints to remain in or return to work, if possible. This avoids potential dismissal on capability grounds or becoming a casualty of long-term ill health-related absence.

Instead of certifying that an individual is fit for work, there will be two options: "unfit for work" or "may be fit for work taking account of the following advice". The maximum period the statement will cover will also be reduced from six to three months.

Russell Brown, employment partner at Glaisviers solicitors, says, "The general consensus within the HR community is that the new system will assist the employer who has proper systems in place to manage sickness absence.

"However, for those employers who don't, there is an increased risk of disability discrimination claims as a fit note may recommend changes to an employee's role. If the employer doesn't consider these, it could be taken as a failure to make reasonable adjustments and therefore, a breach of current disability discrimination legislation."