

## Out with the old and in with the new

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While the budget was largely seen as very neutral with little radical change, the new tax year has brought with it an unusually large number of changes to both personal and business taxes. Many of these changes were first announced in 2007, in either that year's budget or in the later pre-budget report.

Here is a quick guide to some of the changes which will impact on your personal finances this tax year:

### Business Taxes

- The main rate of corporation tax has dropped from 30% to 28%. However, for small companies the rate has gone up to 21% from 20%.
- Significant changes to rates paid by businesses have also come in. Instead of paying just 50% rates on empty shops and offices, owners now have to pay 100% after a short period of time. Meanwhile empty factories and warehouses now have to pay 100% rates instead of none at all.
- The system of capital allowances for businesses has also changed radically for companies, sole traders and partnerships. Building allowances are being phased out; the main allowance rate for plant and machinery goes down from 25% to 20%; but a new 100% allowance has come in for investment in new plant up to £50,000.

### Capital Gains Tax

- The complex system of Capital Gains Tax has been simplified with the old taper relief

and indexation allowances being swept away.

- A new "one-size fits all" flat rate of CGT - at 18% - has come in.
- Entrepreneurs have got some extra relief though, in the form of a new CGT lifetime allowance of £1m taxed at a lower rate of 10%.
- Everyone's basic annual CGT exemption has gone up to £9,600.

### Inheritance Tax

- For 2008-09 the individual's allowance, which is known as the nil-rate band, has gone up to £312,000.
- The allowance for couples and civil partners has effectively risen to a maximum of £624,000 as a result of unused nil-rate bands being transferable on the death of the first partner or spouse.

### Income Tax and National Insurance

- The 10% starter rate of income tax has been abolished, whilst the basic rate of tax comes down from 22% to 20% for everyone. In order to compensate the 5.3m households that lost out from the abolition of the 10% starter rate, the Chancellor has recently raised the personal allowance for under 65s by £600 to £6,035 p.a. - a gain of £120 per year for anyone earning up to £40,835 p.a.
- Age-related personal allowances for those aged 65 or older are seeing a big increase, from £7,550 to £9,030, and to £9,180 for those 75 and over.

- The main National Insurance rate of 11% is now being levied on a bigger chunk of people's incomes, up to £40,040 a year.
- The small but vocal group of tax-payers known as the non-domiciled, will now have to pay £30,000 a year to keep their privileged tax status, once they have had it for seven years. Plus they will lose their previous eligibility for personal tax allowances immediately if they want to keep the "remittance" basis of their taxation.

### Savings

- The hugely successful system of tax-free Individual Savings Accounts (ISAs) is being given a further boost, with the annual limit on savings rising to £7,200 (with up to £3,600 of this being saved as cash).

### Motoring

- The 2 pence a litre increase in fuel duty has now been delayed until October this year.
- On the other hand, some car tax has risen steeply for the most polluting vehicles, with the tax for Band G cars going up by £100 to £400, but by only £5 for other bands.
- Much bigger changes, including the introduction of a so-called showroom tax for the most polluting cars, have been lined up for 2009.

**For more advice on minimising your business and personal tax bills, contact a member of our specialist tax team on 01772 821021 (Preston), 01253 404405 (Blackpool), 01539 729727 (Kendal) or 01524 62801 (Lancaster).**

# Negligent businesses face huge fines

Times are tough for many.

There is the credit squeeze, increasing inflation, lack of funds from commissioners and bankers alike. Something has got to 'give'.

However, when deciding whether and where to wield the cost-cutting axe businesses, and in particular, the directors and business owners will need to have in mind a great many issues, some, of very recent origin.

I speak, of course, about the Corporate Manslaughter and Corporate Homicide Act 2007 (Act) which came into full force and effect on 6th April. Many care businesses and their managers do not have any awareness of this new Act or how it might affect them.

The Act created the new offence of 'Corporate Manslaughter' ('Corporate' Homicide in Scotland) and the legislative purpose is to make it simpler (easier) for the State to secure the conviction of wrongdoers. This Act is aimed not just at companies, as many suppose, but also at unincorporated bodies, Government Departments, local authorities, police forces and so forth.

Under the law, as it stood before this new Act, in order to secure a conviction against a company for manslaughter the prosecution had to be able to demonstrate that there was 'gross negligence' and that the 'controlling mind' of the company had the necessary knowledge/guilt.

## Gross negligence

So, what is gross negligence? Well, negligence denotes carelessness - a failure, in relation to someone to whom a duty is owed, to exercise the standard of care that a reasonable man would. Gross negligence arises where there is a disregard for the life and safety of others such as to amount to a crime.

## Controlling mind

However, it was the controlling mind issue which was the most significant challenge to prosecutors when there was a desire to prosecute a corporate entity. This was most keenly shown where there was a disaster for which it was considered that a large company or organisation was culpable.

Proving the controlling mind was less of a problem in relation to small companies, such as the 'one-man-band' where there have been successful prosecutions for manslaughter, although not many. This is because it is self evident where the controlling mind is - its the man in the one-man-band. Perhaps the most often cited example is the

prosecution which followed the Lyme Bay disaster of 1993 in which four school children lost their lives when canoeing in the open sea. Few people remember the activity centre responsible, OLL which was prosecuted and convicted of manslaughter. However, when one looks at the more complex management structures in large companies it was frequently impossible for prosecutors to identify the 'controlling mind'.

The issue has been side-stepped by the legislative draftsmen. The focus, where there is a death is on the way a company organises its activities and the way it manages them. It will be a matter for the jury whether the conduct of the organisation was such that the conduct of the company was such that it fell far below what, in all the circumstances, is to be expected.

## Duty of care

To be convicted the accused must have conducted itself and/or its affairs in such a way that it 'amounts to a gross breach of a relevant duty of care'.

What is this duty? There is a whole section in the Act directed to this issue; essentially, the relevant duty can arise from (amongst others):

- the relationship with employees, volunteers, contractors and so on;
- occupying premises
- the supply of goods or services
- carrying on any activity on a commercial basis

One will readily appreciate that the duty is wide ranging and will be capable of arising in all activities connected with the operation of a care business.

## How might this Act affect care providers?

The Act is, as yet untested. However, one can envisage a wide range of scenarios.

First, what about the 90 deaths caused by C. difficile in the Maidstone and Tunbridge

Wells NHS Trust last year? We have all read press reports recently that the former chief executive of the Trust suing the Trust for the value of the unexpired term of her employment contract. I venture to suggest that if the circumstances arose now, today, that there is reasonable prospect

that the Trust would have been prosecuted, charged with corporate manslaughter. Similarly, there was the scandal of the treatment of people with learning disabilities in an NHS setting in Cornwall, again, I suspect that corporate manslaughter charges would be made against the NHS Trust.

What about medication errors in care homes? If it can be demonstrated that there are no systems for the handling and administration of medication (unlikely) and a death occurs as a result, a prosecution of corporate manslaughter could be anticipated. More likely, would be that the systems were poorly adhered to and that there was poor or non-existent monitoring and 'policing' by senior management of the business's own policies and procedures. Again, one can reasonably expect a prosecution to follow.

This past six months there have been a number of prosecutions of the NHS under the Health and Safety at Work etc. Act 1974 for injuries and deaths occurring to hospital patients who fell from windows at a height where those windows were not fitted with window opening restrictors or where the restrictors were damaged and ineffective. There were a number of fines of £20,000. In future, one can expect that prosecutions in such circumstances will be for corporate manslaughter.

A final thought under this heading; pressure ulcers. There is a view which has gained currency in recent years that there are almost no circumstances in which a person should develop pressure ulcers. However, I know from my practice that people do. Worse, many progress to grade three and become so severely infected that the survival of the person is compromised. Again, one can expect that corporate manslaughter charges will follow if it can be shown that there was a gross breach of duty by the care provider.

### **Penalties**

The penalties are as before, effectively unlimited fines.

No individual can be convicted of corporate manslaughter nor of aiding, abetting, counselling or procuring the commission of the offence of corporate manslaughter.

### **Legal expense insurance**

I am generally in favour of laying off risk through insurance.

However, look at the cover you have under your policy now - don't wait until you think you need to make a claim. I am prepared to bet all of you reading this article believe that you have legal expense insurance to

cover a range of needs including prosecutions. I expect 90% of you to discover that the policy will only respond after charges have been laid against the insured - i.e. a prosecution is actually underway.

This is short sighted on the part of the insurers.

Some of the most effective work we do as lawyers, and this is the case in the overwhelming majority of criminal defence work, is before a client is charged with any offence. It is not uncommon in the appropriate combination of circumstances to avoid charges altogether. It seems insurers are unaware of this or are simply not sufficiently concerned to aid the insured to avoid the charge being laid.

### **Conclusion**

Care providers of all types must become astute to the fact that with this Act the tables are again being tilted in favour of prosecutors. You need to be aware that there is a possibility of such a prosecution following the sudden and unexpected death of a service user and consult with experienced lawyers as soon as possible.

My plea to company directors is: don't pursue every last farthing of savings in overheads, don't squeeze until the pips squeak. Cutting corners will follow and therein lies the trap.



**To discuss any aspect of this article, call Keith M Lewin, Senior Partner, Brunswicks LLP, Solicitors 0870 766 9285 or send an email to [keith.lewin@brunswicks.eu](mailto:keith.lewin@brunswicks.eu)**



# Could you benefit from outsourced payroll?

Like most businesses, care homes are focused on reducing their cost base in order to make a significant impact on the bottom line. For many businesses, there are significant savings to be made both in money and in administrative time and effort through using an outsourced payroll service. Some of the key advantages of outsourcing your payroll are as follows:

- You **know all costs in advance** - this makes budgeting simple
- You **save time and money** - from as little as £12.35 per week (or £16.50 per month), we will provide computerised calculations for your payroll including: SSP/SMP/SAP, Working Tax Credit, Automated payments to employees, Pensions inc. NHS, Attachments of Earnings, P45/P46, Payslips, Reports, Student Loans, Year End Returns, P60/P14/P35
- There is **none of the administrative burden** that is associated with managing your own payroll
- You don't need to worry about **changes in payroll legislation** and statutory

requirements - these are accounted for as part of the outsourced service

- You reduce your dealings with **HM Revenue and Customs** and other government agencies
- There are **no IT and training costs** of running your own payroll department and you don't have to rely on your IT department for support
- You have no need for any **capital expenditure** - no software, hardware or stationery to buy
- You **don't require any payroll expertise**
- You avoid the inconveniences and costs of covering **payroll staff on leave** - either unplanned (sickness) or planned (holiday) leave can mean you need to organise cover
- **Confidentiality, processing accuracy and meeting payment deadlines** are prerequisites of outsourced payroll provision
- You have **peace of mind** knowing that every aspect of your Payroll is being taken care of by professionals

Our fees include all data entry, production of security payslips, Cheque Summary, Coin Analysis/Banking List, Wages Book Report and Monthly Summary, P45's/P46's as needed, P14's, P35's and P60's. In addition, we also include the handling of your enquiries in respect of HM Revenue and Customs. Our fees also includes all administration, payment by BACS and first class postage. We can also provide specialist reports on request subject to pre-agreed fees.

Finally, unlike other payroll providers, we can also provide specialist HR consultancy for pre-agreed fees. With the ever growing amount of employment legislation the need for specialist advice has never been greater.

**Moore and Smalley's specialist Payroll department currently handle the payment of hundreds of Lancashire and Cumbria's businesses. If you would like to find out more about our service, or for a no obligation fee quotation, please contact our Payroll team. Simply e-mail us at [info@mooreandsmalley.co.uk](mailto:info@mooreandsmalley.co.uk) or telephone 01772 821021 (Preston) or 01524 388719 (Lancaster).**

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