Menzies Property Update

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Welcome to our Summer edition of the Menzies Property Sector Update. If you are involved in property development or investment and you need advice,contact our team of experts who are waiting to help.

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- **Raising finance**
- **Tax planning**
- **Stamp Duty planning**
- **VAT**
- **Audit & Accounting**

Timing is everthing

Saving tax is something that is high on every client's agenda, particularly clients involved in the property sector where the sums involved tend to be considerable.

After a transaction has been completed and the profits realised, there is usually little scope to carry out any tax planning measures. However, clients who think ahead and obtain advice at a very early stage usually find that tax can be saved on future transactions. The important thing is to contact our specialist team at the earliest opportunity for advice.

The key issues that any client involved in property investment or development should consider would include the following:

- Review options held over land subject to planning consent and ensure that these options are held in the correct vehicle and structured appropriately.
- Think about tax liabilities before submitting planning applications for land development; once planning consent is granted it is difficult to restructure the transaction.
- Principal Private Residence is often over looked; understand the rules and use them to your benefit.
- Obtain advice on stamp duty liabilities before going ahead with any transaction.
- Consider VAT implications of any transaction.

Our specialist team has successfully saved substantial amounts of tax, stamp duty and VAT for our clients. Timing is everything and the sooner we are involved the more likely we are able to help you save tax.

Stamp Duty planning

The 2003 Finance Act introduced widely drafted anti-avoidance legislation aimed at closing many Stamp Duty Land Tax loop-holes.However, despite HMRC efforts there are some SDLT mitigation schemes that may still work for some clients under the appropriate circumstances.

Before embarking on a SDLT scheme, clients should take into consideration the risk that HMRC will look carefully at the transactions that use these schemes and will look for opportunities to contest them. It is therefore important that advice is obtained from a reputable source and that the advice is backed with leading Tax Council opinion.

Richard Turner, SDLT Specialist

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Legal verdict opens doors for VAT claims

House of Lords verdict on Conde Nast case presents an opportunity for residential property developers.

In May 1997,HMRC introduced a three year time limit for reclaiming VAT incurred on costs. Prior to this there was no limit.The case has established that, as there was no transitional period given, the time limit was ineffective retrospectively.This means that claims can be made for VAT previously unclaimed prior to 1997.

A refund opportunity for the sector arises in relation to VAT incurred on 'soft land-scaping'. Prior to a 1999 case (Rialto Homes),HMRC would allow suppliers to zero rate the turfing of a new building plot but would not allow them to do so for planting trees and shrubs.This case overturned that view and many developers subsequently made claims for repayment of the VAT wrongly charged, which at the time were subject to the three year cap. Following Conde Nast there is potential to claim back VAT as far back as 1973.The ability to make such a claim will depend upon the records available but it is possible to agree estimations with HMRC.

Jackie Richmond, VAT Director

Buy to let – beware

As many of you know the tax laws in relation to capital gains tax are changing quite dramatically following 5 April 2008.

Some businesses have been taking advantage of the lower capital gains tax rate and certain transactions have been accelerated to occur before 5 April 2008. In most cases it has not been possible to accelerate a transaction since that also accelerates the tax charge and none of us like paying tax unless we absolutely have to.

In very broad terms the changes in the capital gains tax rules make it even less attractive to keep properties that are being retained for investment purposes within a company. This is particularly true if, for example, those properties are going to be sold in due course for a substantial capital gain. By way of a simple example if a property (worth £300,000) was sold triggering a gain of £150,000 within a company then the tax in the company would be at least £33,000 and possibly as much as £42,000 (at either 22% or 28% - in reality it would probably be somewhere between the two). In addition, assuming the gain is required to be transferred out of the company to its owner, then there would be a further tax charge on a dividend which would be a further (approximately) £30,000. This makes a total tax liability of £63,000 - £72,000 on a gain of £150,000.

If, however, that same property was sold by an individual after 5 April 2008 then the tax would be 18% of the gain. This amounts to £27,000 and is clearly a significant saving over the amounts mentioned above.

It should be stressed this only relates to investment assets and not to those that are considered to be trading assets. There are plenty of anti-avoidance rules that seek to identify transactions which are mas-querading as capital gains but are, in fact, property trading.

Simon Massey,Tax Partner.

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