

# News

## Inflation increase of fuel duties

Following the 2003 Budget announcement that the annual revaluation of fuel duties would be deferred for six months until 1 October, due to international uncertainties, with the military conflict in Iraq and the volatility of oil prices, the Treasury confirmed recently that, as planned, fuel duties would increase in line with inflation on 1 October by 1.28 pence per litre.

The legislation for this change was passed by Parliament in the Finance Act on 10 July 2003. Since the Budget, the uncertainty for other regional oil-producing nations has lessened. The volatility of oil prices at the time of the Budget has now diminished and oil prices have become more stable.

## Working Together

Issue 14 of the Inland Revenue publication Working Together has now been released and can be found at [http://www.inlandrevenue.gov.uk/workingtogether/publications/wt\\_14.pdf](http://www.inlandrevenue.gov.uk/workingtogether/publications/wt_14.pdf). It contains items on the following topics: joint self-assessment enquiry workshops; self-assessment returns – additional information; penalties for late filing of self-assessment returns; what is RMS and what does it do?; enabling small business – Inland Revenue initiatives 2003-2004; changes to stamp duty; benefits in kind; services for telephone customers; offshore arrangements project; working together – Revenue website; national working together team; complex personal returns and inward expatriate employees; handling your clients' payments; viewing clients' statement of account over the Internet; claims involving two or more years – interest position; share options – definition of value; tax advisers telephoning taxes contact centres; and pension scheme returns.

## Research and development

The Government is keen to make businesses aware that the latest changes to research and development tax credits, which were included in the 2003 Finance Act, apply with effect from 27 September

2003. For example, the threshold for annual qualifying R&D expenditure for smaller businesses has gone down from £25,000 to £10,000.

Other measures also brought into force from 27 September 2003 include the ability to claim for the cost of agency workers undertaking R&D on behalf of companies and improvements to the rules for those who spend only part of their time on R&D work within companies.

The same changes apply to vaccines research relief. This is a further credit giving an additional 50% on top of other R&D tax credits for companies undertaking research into the diseases most prevalent in the developing world.

## Courses and conferences

- 'Tax credits' by Anita Monteith and 'Section 660A' by Francesca Lagerberg, 15 October, £37 + VAT (Tax Faculty members) £49 + VAT otherwise, venue Chartered Accountants' Hall, London. ICAEW (tel: 020 7920 8479).
- 'Private residence planning', 17 October, £160 + VAT (CLT subscribers) £235 + VAT otherwise, venue London. CLT Conferences (tel: 0121 355 0900).
- 'Tolley's VAT and financial services', 28 October, £499 + VAT, venue London. LexisNexis UK (Tolley) (tel: 020 7347 3500).

## LETTER TO THE EDITOR

Nigel Doran, in his article 'Employee Shares and Market Value' (*The Tax Journal*, 15 September 2003, Issue 708) asks whether the Revenue is right to say that when restricted shares are valued under Schedule 22 they must be valued as if those restrictions would still apply to their hypothetical purchaser. He concludes that the case law supporting this view is shaky and warns that if the hypothetical purchaser can disregard the bad leaver and other employment-related restrictions on the basis that he is not an employee, the 'restricted securities regime will be in dire trouble'.

As a valuation practitioner I think Mr Doran is wrong in his interpretation. The first thing that has to be considered in any tax valuation exercise is what it is that is being valued. Is it a share or is it a share plus some other rights or obligations? There is no need to look to case law to define what is being valued but rather to the particular facts of the case, or in the 'restricted securities' regime, the Finance Act 2003 itself. If it is a share that is to be valued then for capital gains tax purposes any rights in relation to those shares which are not inherent in the asset (and therefore not included in the articles of association) are usually disregarded. The asset

being valued does not as a general rule as suggested by Mr Doran 'include all the actual vendor's rights and liabilities in relation to the asset' although there are circumstances when it might.

What then is being valued under the 'restricted share' regime? Finance Act 2003, s 423(1) describes employment-related securities as being restricted securities or a restricted interest in securities if there is a particular contract, agreement, arrangement or condition in place which reduces the value of those securities. The specific types of restriction are defined in the Act under s 423(2)-(4). For the purpose of this legislation then it seems clear to me that the asset being valued, on an open market basis as defined by TCGA 1992, is a share including the particular rights or obligations defined by Finance Act 2003, s 423. The hypothetical purchaser will therefore be assumed to have similar rights of the actual employee selling the shares. The definition of open market value has not changed. But what is to be valued here is a share including the restrictions which by definition make the share a 'restricted share' under this piece of legislation.

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