



# WHITEFIELD

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## Newsletter September 2012

This month we have included articles that cover: benefits in kind from partnerships, what is and is not a termination payment, new capital allowance rules and HMRC's reward scheme for informants!

Our next newsletter will be published 4 October 2012.

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## Keeping in touch

Its worth keeping an eye on [www.whitefieldtax.com](http://www.whitefieldtax.com) for latest news, and also updates, including service issues like our phones not being staffed eg our monthly team meeting.

You can follow our website with a RSS feed: <http://www.whitefieldtax.com/web/feed/> or keep in touch via Facebook and Twitter:

<http://www.facebook.com/WhitefieldTax>

<https://twitter.com/WhitefieldTax>

Also feedback is welcome on the dedicated [feedback section of our website](#).

If you have a website for your business, and would like to do a link exchange, let us know and we can reciprocate.

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## Recent news from our website

Recent articles on our website include:

Dividend administration guidance

Contributed: Why are we paying Income Tax?

IR35 and Personal Liability - can HMRC proceed against an individual?

Q? Should I be VAT registered

IR35 compliance checks to increase?

The P35 question on service companies - revisited

Contributed: VAT - face value vouchers

Contributed: European VAT update

Drawing the line

<http://www.whitefieldtax.com/web/news-and-comment/> - for these and more

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## Advertorial: Ellis Bower Consulting

After 39 years working in Commercial Banking, Tim Ellis has now established his own Business Consultancy covering the Isle of Wight and South of England. Tim can bring those years of experience together in "Supporting your business" in these difficult and fragile economic conditions. Ellis Bower can provide support for strategic business planning, change management; financial restructuring, business reviews, researching and preparing bank funding proposals and negotiations.

Ellis Bower can support, leadership and management training and be a source of mentoring for SME owner managers, directors, partners and sole traders.

Ellis Bower offers a bespoke service to support the needs of your business.

Why not give Tim a call on 07969456363 or email him on [tim@ellisbowerconsulting.co.uk](mailto:tim@ellisbowerconsulting.co.uk)

[www.ellisbowerconsulting.co.uk](http://www.ellisbowerconsulting.co.uk)

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If you are a client or contact of Whitefield, and would like a advertorial in one of our newsletters, please let us know.let us know.

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## IR35 Developments

For those of you running PSCs, a few IR35 news items you may have missed from our website:

21 August 2012: IR35 and Personal Liability - can HMRC proceed against an individual? <http://www.whitefieldtax.com/web/?p=1297>

14 August 2012: IR35 compliance checks to increase? <http://www.whitefieldtax.com/web/?p=1264>

14 August 2012: The P35 question on service companies – revisited <http://www.whitefieldtax.com/web/?p=1259>

9 July 2012 Closing down your company: a cautionary tale <http://www.whitefieldtax.com/web/?p=1117>

29 May 2012: Service Companies and the P35 question - <http://www.whitefieldtax.com/web/?p=324>

23 May 2012: IR35 and Controlling Persons <http://www.whitefieldtax.com/web/?p=321>

10 May 2012: New HMRC IR35 guidance <http://www.whitefieldtax.com/web/?p=319>

22 March 2012: IR35 and the budget <http://www.whitefieldtax.com/web/?p=312>

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## Benefits in kind and partnerships

In a potentially wide ranging decision, a First-tier Tribunal has ruled in favour of HMRC.

The case involved an LLP partnership that was formed to provide management services to a company. The following details are of interest:

- As part of the arrangement the LLP owned and provided the use of cars to the partners. This included private fuel.
- The partners were also directors of the company, or were family members of the directors.
- The partners had a minimal role in the running of the LLP.
- The LLP only had one customer, the limited company.

The Tribunal considered and reached the following decisions:

- That the LLP's business would have survived without the provision of cars to the partners.
- That all of the car running and acquisition costs were recouped from the company as part of a management charge.
- That the terms of business between the LLP and the company did not reflect those of independent parties acting at arm's length.

The Tribunal decided that the use of the cars by the partners of the LLP was made available due to their employment as directors of the company. Accordingly, the directors should be taxed on the use of the cars as a benefit in kind – the company was also liable to pay Class 1A NICs.

It would seem that there is an effective element of double taxation on the private element of motoring costs – but, in the words of the Tribunal, the taxpayers have “to live with the consequences of that”.

It is not clear at this point if the case will be appealed by the defendant. As things presently stand the case does offer HMRC an opportunity to challenge similar arrangements. The general circumstances of this case are quite specific, though by no means rare, but partnerships that are genuinely “standalone” will not be affected.

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## Termination payments

In a further, recent First-tier case the Tribunal considered the tax treatment of a businessman who was paid £123,750 on the termination of his employment. He dutifully deducted the usual £30,000 tax-free amount from this payment and declared the difference on his tax return.

Unfortunately, the termination payment was paid under the terms of his contract of employment. Payments made in this way are considered to be part of remuneration and therefore taxable in full.

The £30,000 deduction was not, therefore, available.

The case points to the need for constant vigilance when drafting contracts of employment to ensure that the £30,000 exemption is not invalidated. Even a “thank you for your services” letter can cause problems. Do seek our advice if you wish to make use of the exemption: either as an employee or employer.

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## Informants get paid...

A recent Freedom of Information Disclosure has revealed that payments made by HMRC to informants are on the increase. £323,780 was paid out in the tax year 2011/12 compared with just £155,950 in the tax year 2007/08. In total

over £1m has been paid in the last three financial years.

Section 26 of the Commissioners for Revenue and Customs Act 2005 gives authority for these payments. The actual wording of the section is:

*“The Commissioners may pay a reward to a person in return for a service which relates to a function of - (a) the Commissioners, or (b) an officer of Revenue and Customs.”*

The most interesting word in the section is “may”.

HMRC have clarified this point on their website:

“You may receive a cash reward for your information. However, this will depend on what is achieved as a direct result of the information you provide and is awarded at the discretion of HM Revenue & Customs.”

No doubt we will see increases in this type of payment as the current wave of unrest regarding individuals and organisations that do not pay their fair share of tax, gather pace. If you know someone who wants to bring their affairs up to date before it's too late, why not suggest they contact us for help?

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## Selling or buying business property?

Owners of business property will be aware that certain parts of commercial buildings are treated as fixtures and fittings and capital allowances can be claimed.

From April 2012 sellers of commercial property should ensure that they have maximised any claims for capital allowances and have a full track history available to potential buyers. If appropriate elections are made the buyer will continue to enjoy the benefits of any unclaimed allowances.

Buyers in particular should make sure they get full details of past allowances claimed so that they can evaluate the value of any capital allowances they may be able to claim in the future.

From 2014 if a seller has failed to identify and ‘pool’ the expenditure qualifying for capital allowances (even if tax relief is not claimed) then any buyer will be unable to make a capital allowance claim in respect of this expenditure.

The message is clear. If you own, or are considering the purchase of commercial property before 2014, make sure you obtain professional advice to ensure that valuable tax allowances are not lost. Otherwise, as a seller, you may devalue your property as a prospective purchaser may be prepared to pay less than they would if capital allowances were available.

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## Tax Diary Sept/Oct 2012

1 September 2012 - Due date for Corporation Tax due for the year ended 30 November 2011.

19 September 2012 - PAYE and NIC deductions due for month ended 5 September 2012. (If you pay your tax

electronically the due date is 22 September 2012.)

19 September 2012 - Filing deadline for the CIS300 monthly return for the month ended 5 September 2012.

19 September 2012 - CIS tax deducted for the month ended 5 September 2012 is payable by today.

1 October 2012 - Due date for Corporation Tax due for the year ended 31 December 2011.

19 October 2012 - PAYE and NIC deductions due for month ended 5 October 2012. (If you pay your tax electronically the due date is 22 October 2012.)

19 October 2012 - Filing deadline for the CIS300 monthly return for the month ended 5 October 2012.

19 October 2012 - CIS tax deducted for the month ended 5 October 2012 is payable by today.

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**DISCLAIMER - PLEASE NOTE:** The ideas shared with you in this email are intended to inform rather than advise. Taxpayers' circumstances do vary and if you feel that tax strategies we have outlined may be beneficial it is important that you contact us before implementation. If you do or do not take action as a result of reading this newsletter, before receiving our written endorsement, we will accept no responsibility for any financial loss incurred.

Whitefield Tax Limited  
Rowborough Manor  
Beaper Shute  
Brading  
Sandown  
Isle of Wight  
PO36 0AZ

Tel: 01983 614 108

Web: [www.whitefieldtax.com](http://www.whitefieldtax.com)

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