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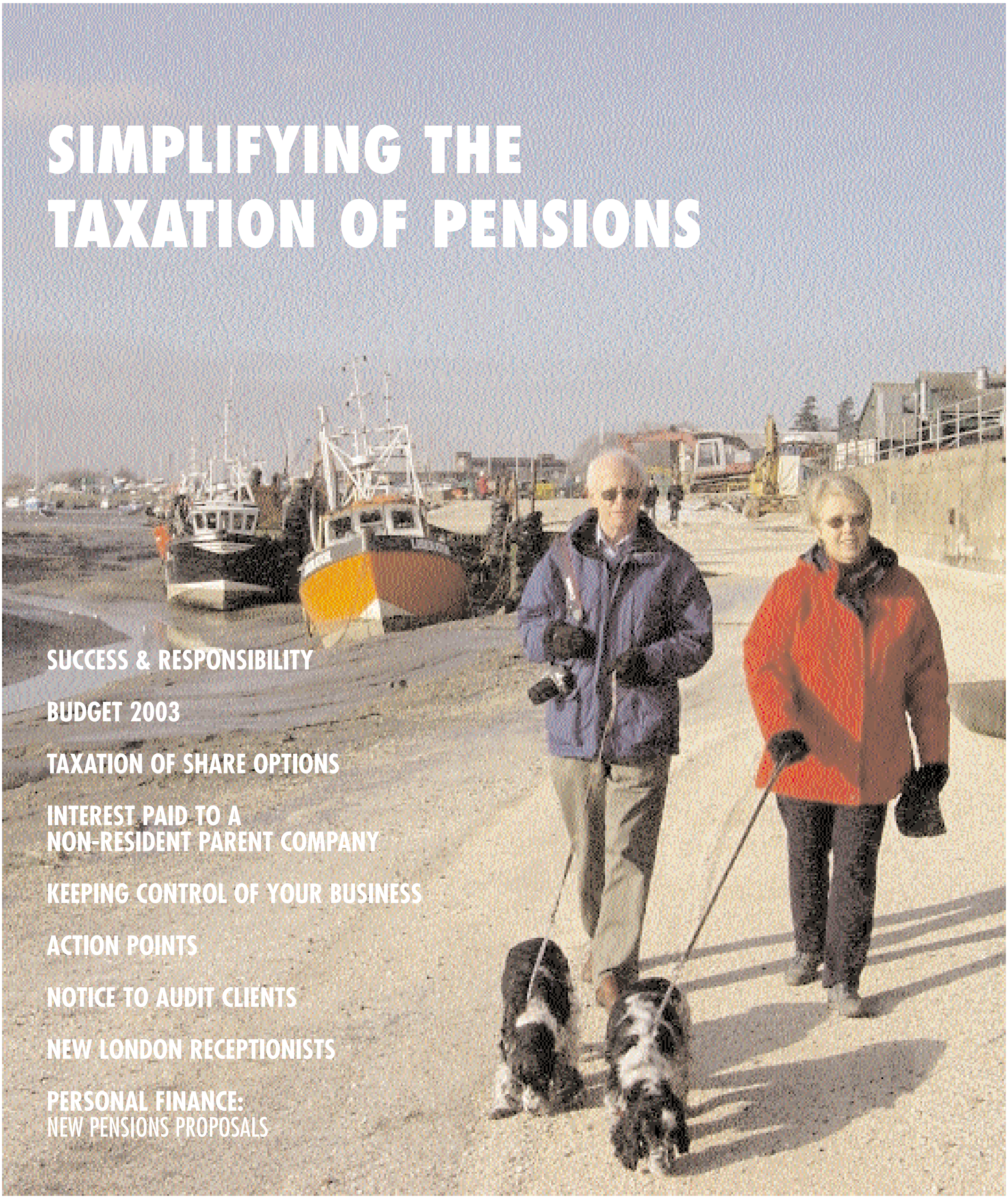
FEBRUARY 2003 NEWSLETTER



SIMPLIFYING THE TAXATION OF PENSIONS

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AGN Shipleys is a member of Accountants Global Network, a worldwide association of separate and independent accounting and consulting firms.

Managing partner John McCuin examines the legal, corporate and personal responsibilities of directors, trustees and partners.

Success and responsibility

For many people, becoming a director of their employing company is the successful pinnacle of their careers. Being appointed a non-executive director of a company, whether or not at a lucrative salary, is a personal compliment to the perceived abilities of the person concerned. It is natural, and usually justified, for the individuals concerned to indulge in a measure of self-congratulation.

A great deal of attention has been paid in recent years to corporate governance. On the negative side, this has highlighted such issues as 'fat cat' salaries for directors. On the positive side this has concentrated on such topics as the proper separation of powers in management, and the independence of audit and remuneration committees, as in the recent Higgs report. Unfortunately, these issues tend to concentrate on the proper governance of major listed companies, with the consequence that the responsibilities of directors of smaller companies are given little publicity.

Responsibilities

The responsibilities of company directors are broadly the same, whatever the size or status of the company, and whatever the status of the director. Their basic duty is to act in the best interests of the company, which usually means in the best interests of the shareholders.

No legal distinction is made between executive and non-executive directors, even though the non-executive will not have day-to-day contact with company management. And the production director and the finance director are equally responsible, in law, for the company's finances!

The only time when the shareholders' interests are not paramount is when the company is at risk of insolvency, when the interests of actual and potential creditors take precedence. In these circumstances a director could be liable for 'wrongful trading' and be personally liable for any increase in creditors, including the Inland Revenue and Customs & Excise.

Shadow directors

If you are closely involved with a company, and have influence on the current directors even though you are not officially a director yourself, you could be deemed a 'shadow director' with the same responsibilities and duties as a legally appointed director. For example, if you are involved with a family company and regularly advise some of the current directors, you need to be very careful in these circumstances.

What to do

If you are a director of a company, whatever its size and whatever your status, do ensure that you understand your duties, responsibilities, financial liabilities and possible exposure to legal proceedings.

> *"Ensure that you understand your duties, responsibilities and liabilities."*

There are many general books available on this subject, and you can also find guidance on the internet. If you want to know how your home, savings and investments could be at risk from your position as a director, your usual AGN Shipleys contact will also be able to advise you. If you have a specific worry or question, please ask us sooner rather than later.

Other responsible positions

If you are a trustee of a charity, or a partner in a traditional partnership or a limited liability partnership, similar considerations apply and you need to be aware of your responsibilities and potential liabilities. Please ask us for information and advice.

SIMPLIFYING THE TAXATION OF PENSIONS

A consultative document published in December 2002 set out the Government's proposals for simplifying the taxation of pensions. These will probably apply from 6 April 2004, which has been designated 'A-day'.

The minimum retirement age is to be raised from 50 to 55 by 2010 (subject to an exception for ill health retirement), even for those such as professional sportspersons whose retirement age is currently lower than 50. The special position of members of the armed forces, the police and the fire service is under consideration.

Limits

The current limits on annual pension contributions and benefits will be replaced by a single lifetime limit of £1.4 million on the amount of pension saving that can attract favourable tax treatment, complemented by an annual limit of £200,000 on 'inflows of value' to an individual's pension fund, which includes both contributions and growth of pension rights [not income and gains earned within the pension fund], but not counting any National Insurance rebate. These limits will be indexed after A-day.

Income tax relief will be available on contributions, broadly in the same way as currently, of up to £3,600 or, if more, chargeable earnings. Anyone whose 'inflows of value' in a year exceed £200,000 will be liable to income tax on the excess.

Benefits

On drawing benefits (which must be no later than age 75) the £1.4 million lifetime limit will apply. Subject to that, up to 25% of the 'matured pension savings' may be drawn as a tax-free lump sum. The remainder must be drawn as an income subject to income tax. Until age 75 (when a lifetime annuity must be purchased) various forms of 'staggered vesting' are to be available; like the drawdown currently available for personal pension policies or by buying limited period annuities. If the pension fund exceeds £1.4 million the excess will be liable to a 'recovery charge' of one-third. 25% of the other two-thirds of the excess may be drawn as a lump sum, which will be subject to income tax, and the balance used to pay pension income. In effect the excess will attract total tax at 60% for a higher-rate taxpayer, 48% for a basic rate taxpayer.

Those with total pension rights at A-day already over £1.4 million are to be able to take any unvested rights in full on the current basis.

Death benefits

On death 'in service' a scheme may pay unlimited lump sums (tax-free 'except for the recovery charge') and/or taxable income benefits for survivors or dependants.

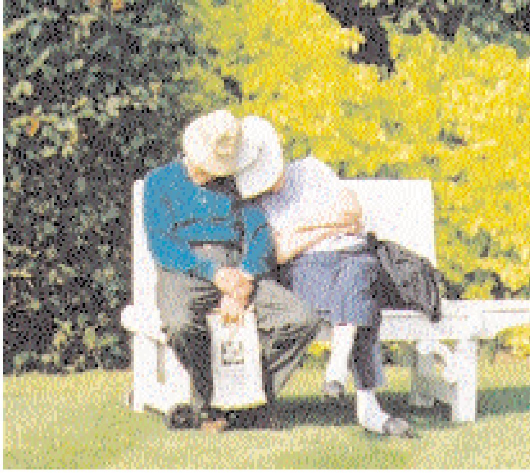
On death while under 75 and receiving pension benefits the scheme may pay limited lump sums, taxable at 35%, of no more than the value of the vested funds used to provide the pension income less the sum of the pension payments paid before death; and/or taxable income benefits for survivors or dependants.

On death after age 75 the only benefits available to survivors or dependants will be income benefits.

More detailed information is available on the Hot Topics page of our website at www.agnshipleys.com

Personal Pension and Retirement Annuity Contributions

One of the less widely noted proposals in the Consultation document on Pensions Taxation is that the present carry-back (and, in the case of retirement annuity contracts, carry forward) provisions would lapse with the introduction of the proposed new rules – possibly from 6 April 2004. While the ability to carry forward unused relief would then become redundant, the carry-back elections can be useful. If you think you may be affected please consult your usual Shipleys contact.



BUDGET 2003

At the time this issue of *Shipshape* went to press the Chancellor had not announced the date of this year's Budget statement.

Whatever the date, our Budget Summary will be added to our website at www.agnshipleys.com overnight on Budget Day, and will be available as a printed document the next day. If you are not on our usual mailing list and would like to receive a printed copy please telephone Sue Robinson on 020 7312 6534 or e-mail robinsonsue@agnshipleys.com

We shall be holding Budget Briefings, to examine the practical implications of the Chancellor's Budget proposals. If you do not usually receive an invitation to one of these and would like to attend, please ask the appropriate person as shown below.

London: Breakfast Briefing on the morning after Budget Day at our offices at 10 Orange Street, London WC2, from 8.30 am until about 9.45am. A buffet breakfast will be served. For an invitation please contact Sue Robinson, telephone 020 7312 6534, or e-mail robinsonsue@agnshipleys.com

Godalming: Breakfast Briefing on the morning after Budget Day, from 8.30am until about 9.45am. A buffet breakfast will be served. For an invitation please contact Pat Phillips, telephone 01483 423607, or e-mail phillipsp@agnshipleys.com

Saffron Walden: Briefing, at a time and place to be announced, on the day after Budget Day. For an invitation please contact Doreen Harvey, telephone 01799 521301, e-mail harveyd@agnshipleys.com

Nancy Cruickshanks is AGN Shipleys' specialist VAT adviser.

VAT

VAT bad debt relief

In the April 2002 Budget the Government announced that, from a date to be announced, creditors claiming VAT bad debt relief would no longer have to notify their debtors of the claim. We now know that the new rules apply to supplies made on or after 1 January 2003.

VAT Avoidance Schemes

In a previous *Shipshape* brief mention was made of a VAT case involving Halifax plc that appeared to provide Customs & Excise with a decisive weapon enabling them to defeat any planning scheme.

Customs successfully argued that a series of transactions entered into solely for tax avoidance reasons could not be an 'economic activity'. So building services routed via Halifax subsidiaries, to make the VAT disappear, could be deemed to be supplied directly to the Halifax which would make the VAT stick! This has become known as the Halifax principle.

The Halifax appealed, the case was reconsidered, and subsequently two issues have been referred to the European Court: whether transactions entered into solely for tax avoidance reasons can be 'economic activities'; and the applicability of the Abuse of Rights doctrine.

In the interim the Customs anti-avoidance team has been active in other cases:

BUPA – a £100 million prepayment was made, anticipating a change in the VAT rate. Customs successfully deployed the Halifax principle to defeat this scheme. As a side issue, Abuse of Rights was also considered and found not to apply.

Blackqueen – a circular series of transactions allowed VAT to be recovered in full on the purchase of new cars, but for output VAT to be accounted for only on the margin rather than on the full selling price. This time the Abuse of Rights doctrine was successfully deployed by Customs to defeat the scheme.

Not every case goes in favour of Customs. The Royal Bank of Scotland won a case because tax avoidance was not their sole motive so the Halifax principle could not apply. In the RAL case Abuse of Rights was ruled not to apply when the normal application of the VAT rules produced a result that Customs did not like!

Although Customs & Excise are recruiting even more anti-avoidance advisers and continuing to challenge what they view to be unacceptable tax avoidance, the courts are not always supportive of their efforts. Meanwhile we at AGN Shipleys do of course give our clients planning advice rather than participate in unacceptable tax avoidance!

100% tax relief on a car!

Tax relief for the depreciation in the value of a car is normally confined to an annual maximum of £3,000, with a balancing allowance on sale.

For cars with low carbon dioxide emissions (not more than 120 grams per kilometre) and electrically-propelled cars, however, tax relief may be claimed on 100% of the cost in the first year. This is of course only an acceleration of tax relief, but can still represent a significant cash-flow benefit.

An even more clear-cut advantage comes with leased cars. If a normal car costing over £12,000 is leased, there is a limitation on the tax deductible lease rentals, but no such restriction applies to cars with low carbon dioxide emissions and electrically-propelled cars.

SHARE OPTIONS

The Revenue is not to appeal the decision in the case of *Mansworth v. Jelley*, which decided that market value has to be substituted for any actual consideration given for shares acquired when an employee or director exercises his option.

The anomaly is that the legislation directs one to add to the acquisition consideration the amount charged to income tax on the exercise of an option. As market value is deemed the acquisition consideration, the absurd result which emerges where an option is exercised and the shares are immediately sold, as is often the case, is to throw up an allowable loss for capital gains tax purposes equal to any amount charged to income tax. The other side of the coin is that the deemed total disposal proceeds for anyone supplying the shares to the employee/director who exercises his option – such as an employee trust – are also illogically increased.

Clearly this result was not intended, and corrective legislation is expected. In the meantime, anyone actually or potentially affected should consult his usual Shipleys contact to discuss the scope for action.

Interest paid to a non-resident parent company

The UK, like most developed countries, has provisions limiting the tax-deductible interest that may be paid by UK subsidiaries to their overseas parent company. Now, at least where the parent is resident elsewhere in the European Union, these rules have questionable force, as a result of the ECJ decision in *Lankhorst-Hohorst Gmb.* The reaction should be to amend the rules so that residents in other EU states are treated in the same way as UK residents. But the result might be to limit tax-deductibility for interest paid to all parent companies, rather than relaxing the rules for other EU parents. We are waiting to see which way the Government jumps. Anyone who might be affected should consult his usual AGN Shipleys contact to find out the latest position.

KEEPING CONTROL OF YOUR BUSINESS

Trading conditions are difficult in many sectors at present, and it is more important than ever for management to have a firm grip on the financial aspects of their businesses, to have good management information, and maintain a dialogue with their accountants. You don't have to be a financial expert; with the right information you can do your own analysis for signs of trouble.

Are your management accounts properly maintained on a timely basis? Are you preparing budgets, do you know what your fixed overheads are, and your break even turnover level? These are essential to help you manage the financial aspects of your business, and spot trouble before it is too late.

Cash flow

First, look at the level of your trade debtors. If these are more than 25% of your annual turnover, this could mean that some of your customers are taking more than three months to pay.

Of course, you may recently have delivered a very large order which is not yet due for payment, but if you don't know of a good reason for a high level of trade debtors you need to address this. Are the shortcomings at your end, because your collection procedures are at fault? Or is it possible that some of your customers are having difficulty in paying?

Now look at the bank balance. What is the change since the previous period? Can you explain the change during the review period? What does it tell you about the trend of your business? Are you incurring trading losses, having cash collection problems, building stock levels (perhaps unwisely) - or have you incurred significant capital expenditure?

Next, look at your trade creditors. If they have increased without a corresponding increase in turnover, do you know why? Again, a recent large order may be the explanation, but if not you need to consider how you are going to manage this debt.

Are stock levels adequately controlled? Do you have an adequate grip on your work in progress? Are your customers or clients being billed as soon as is appropriate?

Profitability

Check your gross margins. Are they properly calculated and maintained at a healthy level? If they are falling you will probably have to increase turnover, or cut costs, or both. The important thing is to be aware in good time, and take action to arrest any decline.

> ***"Both the Revenue and Customs & Excise are capable of moving very quickly and decisively, and will this year lose their status as preferential creditors, making them even keener to collect money"***

Do you have creditors other than your suppliers? Failure to keep up-to-date with payments of PAYE and VAT is often the beginning of a steep and slippery slope, with consequences which go by way of penalties to the arrival of bailiffs with distraint warrants. Both the Revenue and Customs & Excise are capable of moving very quickly and decisively, and will this year lose their status as preferential creditors, making them even keener to collect money that is due.

Problems?

If you can't undertake the sort of analysis described above, your management accounts are probably not good enough. If you can, and you find problems you can't explain and remedy, you may be in trouble.

In either case, call on your usual contact at AGN Shipleys for help. We've seen it all before. But please don't leave it too late.

Paul Druckman

First steps to a paperLESS office

We believe that the justification for less paper in a business is efficiency and professionalism, rather than simply cost reduction. The environmental considerations do not seem to be enough to encourage businesses to change their ways.

As a first step look at organising your electronic files and folders:

- By customer and by product: move your electronic filing to much the same way paper filing has been done for many years. Get away from filing by author: it is not effective.
- Family tree: let the system have a hierarchy, as in a family tree diagram, with subfolders for projects or years, or whatever is appropriate.
- Ignore software: ensure that files from all types of software are held in the files and folders; it is not efficient to have different folders for different software products. Whether it is Word or Excel is irrelevant; let Microsoft Windows handle which software package opens which file.
- One version only: make sure you have only one document filed electronically; previous versions represent clumsy work and clutter up the system for you and others.
- Employ a Librarian: larger businesses should consider employing someone with the skills of a librarian. It is not a technology operation; it is filing, cataloguing and retrieving.

To make yours a paperLESS office contact Paul Druckman at Orange Consulting Ltd on 020 7312 6514 or orangeconsulting@agnshipleys.com

ACTION POINTS

One of the things our clients have in common is that they all enjoy reducing their tax bills. Below are details of some different ways in which our clients are currently saving tax, and some of them in substantial amounts.

If any of these circumstances apply to you please ask your usual AGN Shipleys contact for advice, or an introduction to our appropriate specialist, to find out whether you can also reduce your tax bill.

Bonus Payments

Companies planning bonus payments to staff in the fairly near future should consider paying them before 5 April this year. Both the employer and the employees concerned would save the 1% increase in National Insurance Contributions which comes into effect in the next financial year. But there will also be an effect on your cashflow, and payments made this year will bring forward the date on which any PAYE and NIC is payable.

Companies planning bonus payments to staff in the near future should consider paying them before 5 April this year.

Research and Development

Smaller companies which produce truly innovative products can claim tax relief on 150% of their eligible research and development costs on those products or, if it creates a tax loss, obtain a tax refund of 24% of such costs.

Alternatively, in certain circumstances, it is possible to obtain advance funding for R&D by applying to the Department of Trade and Industry for a ‘Smart Grant’ for innovation, which will fund up to 40% of R&D costs. But no tax rebates can then be applied for.

Saving VAT

If your business has heavy advertising costs in the UK or the rest of Europe, which it is unable to recover, it may be possible to avoid paying VAT on these.

IMPROVED CLIENT SERVICE

Clients of London office, accustomed to the pleasure of being welcomed by Tracey Holland and Lara Symons in Reception, now have two new reasons to be cheerful when they visit the office.

Tracey has been working part-time since the birth of her daughter, Millie, and Lara has been promoted internally. Tracey (standing, right) has now been joined by two new receptionists, Clare Gillett (left) who is part-time and Denise Gould (right), who is full time.

Tracey explains, “Lara’s promotion gave us the opportunity to re-think our reception arrangements. Some clients like early morning meetings, others visit after normal business hours in the evening. Having three of us, with two on shifts, means that we can cover reception for longer days, though we are still grateful to the secretaries who help us make sure that there is a friendly reception for clients at all times.”

AGN Shipleys Managing Partner John McCuin has been appointed a Director of AGN International-Europe Ltd, a new company formed to enhance services to AGN members and clients in Europe by improving the technical resources available to them on both tax and accounting issues.

John is also Chairman of AGN’s European Audit Working Group, and partner Steven Jeffcott, who is a past Chairman of AGN International, remains a member of the main board.

AGN now has 179 member firms, with 496 offices in 76 countries, and a combined annual turnover of $923 million. Members have access to the knowledge and expertise of more than 10,000 partners and professional staff worldwide, and can put clients directly in touch with appropriate professional help wherever in the world they need it.

Notice to audit clients

Public concern about the integrity of auditing, in the wake of Enron, WorldCom and others, has prompted the Institute of Chartered Accountants in England and Wales to issue revised guidelines on communication between auditors and their clients.

Auditors must now ensure that their clients are aware of their intended approach to the audit, the specific risks to be covered, and the level of materiality that is envisaged. The purpose of this is to help clients understand what the planned audit will cover, and to give them the opportunity to extend its scope, if they wish, by prior discussion with the audit team.

Although the Institute’s guidelines allow for this communication to be made informally, we have decided that this will usually best be done in writing. So many of our audit clients can now expect a letter from us, shortly before their audit is due, explaining how we intend to approach their audits and inviting them to discuss this beforehand if they wish.

A valuable service for our clients

Employment legislation is changing at the fastest pace ever known, and it is difficult for any employer to keep up with it. As ever it is the smaller employer, without a human resources department, which feels this additional administrative burden the most.

There are now no exceptions for small companies. All employers (even of only one person) are legally obliged to provide every employee with written terms of their employment, for example, and these terms must contain certain specific minimum conditions. The official penalties for getting employment matters wrong have increased dramatically, and litigation by aggrieved employees is increasing.

beprofessional is a web-based employment law and HR solutions service, designed specifically for smaller businesses and kept up-to-date with current legislation. Its recruitment service provides practical help in the form of draft job descriptions, recruitment advertisements, offer and rejection letters, and employment contracts, together with guidance on checking references. Its employment service guides you through performance and appraisal reviews, grievance policies, disciplinary procedures, the rules on retirement, redundancy and resignation and much more, to help employers keep within the law.

You can see the full range of services on offer at www.beprofessional.com

AGN Shipleys believes that this service could be of real value to many of our clients, and has entered into an arrangement with **be**professional and negotiated a reduced fee for our clients of £375 plus VAT for an annual licence, instead of the full rate of £499.

To take advantage of this offer please speak to your usual AGN Shipleys contact or to Jane Henman on 0207 312 0000.

CLIENT NEWS

Pat Reeves (left) and Rohan Blacker.

Meals on two wheels

What are you having for dinner tonight? Goan Chicken Curry? Tiger prawns with red peppers in a sweet Thai tomato sauce? Moroccan Lamb Tagine? Penne alla Carbonara? Salmon and Smoked Haddock Fishcakes?

Any or all of these are possible at home, without the effort of preparing them, if you order from Deliverance. You can also have a plate and cutlery to save washing up, a wide choice of drinks, and a video to watch afterwards.

Deliverance is now number 38 in The Times Fast Track 100, and has come a long way since Pat Reeves and Rohan Blacker founded the company in 1997. Their vision was clear: to provide high quality meals prepared by professional chefs from the finest ingredients and to deliver them at speed by scooter.

They began in a shed in Battersea, with second hand catering equipment, and soon found an eager market for the quality they were providing. But they were beset by many of the classic problems of a start-up company: finding and keeping the right staff, under-pricing their products and controlling their cash flow.

"In retrospect we had a series of mostly inappropriate book keepers," remembers Rohan. "We were in a state of constant confusion about our finances, which is alarming to look back on, and we had little management information to help us plan our expansion."

But expand they did, first into adjacent premises, and in 2000 into additional premises in Clerkenwell, where the late-working culture of the City provided them with enthusiastic new customers. In March this year they will open 'Deliverance West' in White City, to serve areas such as Notting Hill, Shepherd's Bush, Hammersmith and Chiswick.

These three big kitchens, with their small armies of chefs and support staff, each need to serve 500 meals a night to break even. "That's fine in the densely populated areas of central London," explains Rohan, "but we shall have all those areas covered by March, and our next stage of serious growth will be achieved by establishing smaller kitchens to serve other affluent, but less densely populated, areas of London such as Dulwich and Richmond. This will also make us more visible, as these are likely to be High Street premises."

Nowadays, of course, Pat and Rohan know the exact state of their finances and have the information they need to plan their expansion, having been clients of AGN Shipleys for the last three years or so. They have also used the services of Tor Consulting Ltd to plan company pensions.

But one of their attempts at expansion did go wrong, although it had a happy ending. They bought The Crown and Sceptre pub in Melina Road, Shepherd's Bush, intending to make it their base for expansion in West London.

"As soon as we'd fitted out the kitchens with wok cookers and oriental steamers we knew it wasn't going to work," admits Rohan. "So we changed them back again to more traditional ranges, and now we have a great pub serving great food, which is wonderful but not exactly what we intended!"

See www.deliverance.co.uk for menus and details, or telephone 0800 019 2222 for a printed menu.

Julian Hawkes is a Director of Tor Consulting Limited, an Independent Financial Adviser, which is a joint venture with AGN Shipleys.

Tor Consulting Limited is regulated by the Financial Services Authority.

PERSONAL FINANCE

The Future of Pensions

The taxation aspects of the Government's proposals on pensions are dealt with on page three of this issue of *Shipshape*. Our preliminary reaction to the proposals, in terms of our clients' interests, is not all that favourable.

It is disappointing that the Government has not been bold enough to address the complexities and shortcomings of the current State system, and has chosen to ignore the comments and advice received from just about every expert in the pensions industry.

Main provisions

No changes have been proposed to the excessively complex two-tier system of State benefits and means tested benefits, nor to the State Pension Age, although there will be greater flexibility regarding the age at which benefits can be taken.

There will be no new tax incentives. The principles underlying the tax treatment of retirement savings will be broadly unchanged: full tax relief on contributions; investment growth largely tax free; it will be possible to take part of the benefits in the form of a tax free lump sum; pensions will be taxed as income. However, a single simplified tax regime covering all types of pension provision will be introduced.

Pension provision will remain voluntary. An independent commission will be set up to review the voluntary pension system relative to compulsory provision, and self-administered pension schemes (SSAS and SIPPS) may face limitations on the present range of acceptable investments.

Likely effects

The Government will be keen to promote the radical nature of its proposals, but in our view the proposed simplification of the tax regime will not mean a radical change in the willingness or ability of the majority of people to save for their own retirement.

The Government's proposals will do nothing to address the savings gap, nor the crisis in confidence affecting pensions in the UK at present. There is nothing concrete to encourage the poorer members of society to save for retirement, nor to reverse the increase in the number of pensioners subject to means tested benefits.

The proposals will do nothing to encourage employers to run final salary occupational pension schemes for their employees. On some issues the Government has not even made any firm proposals - it has simply expressed a willingness to consult.

The proposal to test pensions against limits at both the contribution (annual limit) and benefit stages (lifetime limit) is an unnecessary complication. At present, pensions are tested against limits either at the contribution stage (money purchase or defined contribution schemes) or at the benefits stage (final salary or defined benefit schemes). Testing at both stages in this way is adopting the most bureaucratic aspect of both regimes and combining them into one, hardly a great simplification!

The possible limitations on self-administered pension schemes are unwelcome, and would provide a further disincentive to those pension savers who are disenchanted with pension arrangements administered by insurance companies. In particular, the Government has criticised investment in property that is let to the sponsoring employer as perhaps being inappropriate to provide a pension, at a time when property has been the best-performing investment class over the last five years!

The Government is not proposing to remove the existing mandatory requirement to provide some element of index-linked pensions, despite industry-wide opposition. The new proposals for partial indexation sound very complicated on first reading, especially in a world where pensions are intended to be simpler.

The message

The underlying message is clear - it will be up to individuals to save more and/or work longer. The Government has shied away from compulsory pension contributions as being politically unacceptable, and has passed this particular hot potato (and the subsequent responsibility for considering compulsion) to an independent commission. The whole of the pensions industry has long been highlighting the savings gap and the crisis in confidence affecting pensions in the UK at the present time. We can but hope that the independent commission will be strong in its resolve to address these problems.

What to do?

For the moment the answer is that you can do little for your own circumstances that will be immediately effective, except to worry and consult your personal financial adviser if you think you may be affected in the short term, and to lobby your MP/trade association/Chamber of Commerce if you are concerned about the long-term effects of these proposals.

You will find more details of these proposals on the Hot Topics page of our website at www.agnshipleys.com

Detailed advice should be obtained before taking action, or refraining from taking action, as a result of information in this newsletter.