

**Introduction**

Welcome to the Spring 2009 Client Newsletter from Royce Peeling Green.

The first quarter of 2009 was a busy time for us at RPG as we continued to expand the business itself and the range of services we are able to offer you as clients.

In October 2008 Royce Peeling Green Limited merged with the London based firm of Chartered Accountants Jackson Taylor. The merger enables the combined London office of RPG to offer all clients an extended range of services.

The increases in both the number of staff and their expertise will allow RPG London to provide enhanced resources to clients to assist them in meeting their day to day

accounting and business support needs.

However, the firm will now also be able to help existing and new clients in more depth on Tax, Consultancy and Corporate Finance while for the first time offering clients of Jackson Taylor assistance with financial planning, financial services, insolvency and business recovery.

Partner in Jackson Taylor, David Million has been welcomed to the board of Royce Peeling Green Limited.

In March 2009 RPG Consulting Limited acquired Arthur G Davis & Co, a well-established firm of

financial services and mortgage advisers.

This acquisition doubles the number of registered advisers and administrative staff we have available and we hope this will only serve to enhance the personalised service we pride ourselves on. A very warm welcome to Leslie Rees, Malcolm Williams and team.



Our expanded St Asaph Team

Special points of interest:

- Supply of goods and retention of title
- New filing deadlines for company accounts
- New environmentally based pooling system for company cars

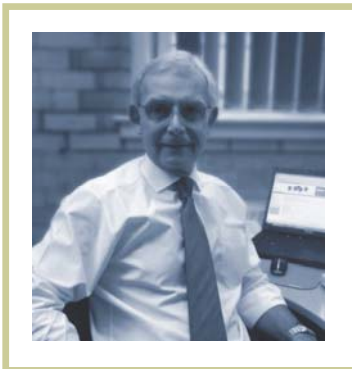
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**Changing faces**

As well as welcoming the arrival of the teams from Jackson Taylor and Arthur G Davis & Co we would also like to introduce you to Keith Pope.

Keith joined us as Tax Consultant in March 2009. His track record in understanding the complexities of all areas of UK taxation is second to



none. In these turbulent times his expertise will be invaluable.

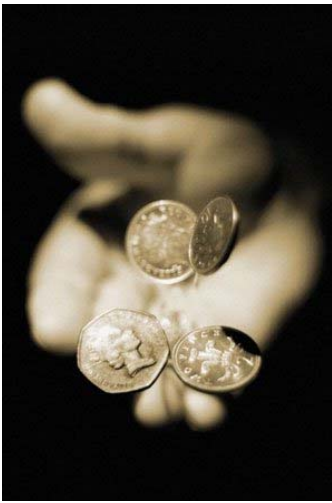
Keith qualified in 1976 with Coopers & Lybrand in Sheffield. He began specialising in tax in 1977.

Keith was a tax partner for three years in a top 20 practice and has

spent the rest of his career as a tax partner in medium-sized practices.

He specialises in providing tax advice to owner-managed businesses and high net worth individuals.

Jim Hilton-Jones left RPG as a director at the end of April 2009 for pastures new. We would like to take this opportunity thank him for his hard work and to wish him all the very best for the future.



### *Planning point*

*Our Business Recovery and Insolvency Department is always available to assist in these cases particularly if your discussions with an IP are not progressing to your satisfaction!*



## Retention of Title

If you supply goods in this current climate of economic uncertainty it is even more important to ensure that you have adequate means of redress should your customers fail to pay and be in danger of or enter into formal insolvency proceedings.

One such remedy is to incorporate a retention of title clause in your standard terms and conditions of trading. Whilst such a clause should not be used as a replacement for a credit checking system, it will provide additional security in the event that your customer fails to pay and is in danger of becoming insolvent.

The basic law states that when goods are the subject of a contract of sale, title shall pass from the seller to the buyer at the time specified in the contract. If the contract does not specify a time, title passes upon delivery.

To achieve retention of title the contract must stipulate that even though the goods are delivered into the control or custody of the buyer, title shall not pass to the buyer until some condition, i.e., payment, is fulfilled.

The retention of title clause allows you to enter the buyer's premises for the purposes of inspecting or removing goods where legal title has not yet passed and will place an obligation on the buyer to ensure your goods are kept separately and clearly identified.

The contract is usually entered into when the buyer orders the goods and the seller agrees to supply them. At this stage the re-

tention of title clause requires to be advised to, and acknowledged by, the buyer.

Where the parties are involved in a "one-off" transaction it is not sufficient to convey the terms on the invoice as this is normally a post-contractual document and consequently communication of the clause will not have been made at the time when the agreement was struck.

The terms for retention of title vary and will depend on the nature of the goods supplied. The object is always to create a security in respect of a debt owing by the buyer to the seller and the contract may attempt to:

- retain title to the goods supplied and held by the buyer in their original state;
- retain title to goods supplied and sold on in their original state to 3<sup>rd</sup> parties;
- retain title to goods supplied which may have been processed or converted into new goods;
- claim title to the proceeds of sale of goods sold in (ii) above;
- claim title to the proceeds of sale of processed or new goods sold in (iii) above.

As regards the debt that may be secured, this may be for:

- the price of goods supplied and not paid for;
- all accounts owing by the seller to the buyer for goods or services

supplied (all monies).

When suppliers incorporate clauses to claim title to processed goods or proceeds of sale then complex legal arguments can occur.

Generally a properly drafted retention of title clause will succeed where goods are still held in their original state by the buyer provided the clause has been communicated to the buyer at the time the contract was made and the goods are able to be identified as having been supplied by the seller. Identification of the goods supplied is vital to the success of any retention of title claim.

Where goods have been sold on by the buyer in their original state title will usually pass to the new purchaser if the retention of title clause does not prevent the buyer from reselling.

Retention of title claims for goods supplied and processed or incorporated into new goods are difficult to enforce. If the goods have been mixed and cannot be identified the claim will usually fail. If, however, the goods remain identifiable and can be removed from the finished product for example by unbolting, then it is possible a claim could succeed.

If your customer has not paid and you suspect they may be in financial difficulties and heading towards insolvency, you should take immediate steps to enforce the retention of title clause as it is often simpler, quicker and financially more beneficial to deal with the customer at this stage

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## Retention of Title

*(Continued from page 2)*

rather than after commencement of insolvency proceedings.

If your customer does go into a formal insolvency procedure it will be necessary for you to deal with an insolvency practitioner (IP) rather than the buyer. The IP will normally be an experienced professional used to dealing with retention of title claims.

If your customer does commence insolvency proceed-

ings you should contact the IP as soon as possible and forward copies of all relevant documentation. You will usually receive a questionnaire from the IP which should be completed and returned immediately.

Arrange to visit the premises at the earliest opportunity to identify your goods and make an inventory of the goods ensuring this is agreed with the IP. You would not normally be able to remove your goods at this stage but if any of your goods are sold or used and

your retention of title clause is proved to be valid the IP should pay you the cost of those goods.

Keep in contact with the IP on a regular basis to discuss the progress of your claim.

Should you wish to discuss current retention of title issues with insolvent customers or retention of title clauses in your terms and conditions of trading please contact us on our dedicated insolvency hotline - 0161 608 0002.

*Be persistent until the IP makes a decision as to whether or not he considers your claim is valid..*

## Companies House penalty regime



One of the great complaints about the penalty regime for the late filing of company accounts is that it is entirely arbitrary so the director who mistakenly overlooks the submission of one of his dormant company accounts is treated the same as someone who is running a multi-million pound scam and delaying accounts submission as part of the deception.

Also, once one has reached a certain point after the penalty regime kicks in, there is no incentive to bring matters up to date and, as a result, it just encourages bad filing practices amongst the very tardy.

Companies House response to this has been the reform this regulation by simply increasing the fines for everyone as shown in the table

below.

**N.B.** For companies with accounting periods beginning on or after 6th April 2008 the filing dates for accounts have been reduced from 10 months to 9 months for private companies and from 7 months to 6 months for PLCs.

Please ensure that all paperwork for accounts or audit is with us within 3 months of your year end and keep an extra eye out for those dormant company accounts as they are invariably the ones that get

forgotten and then unnecessarily fined.

If you have any doubts, by transferring your registered office to this address we can undertake a full secretarial service and ensure that your statutory obligations in this regard are kept in good order. This can cost as little as £150 per annum.

Please call David Million if you have any queries.

*When names of the Offices of Government get changed it is usually a sign of deterioration and this is no exception.*

| How late are the accounts delivered | Private company | PLC    |
|-------------------------------------|-----------------|--------|
| Not more than one month             | £150            | £750   |
| One to three months                 | £375            | £1,500 |
| Four to six months                  | £750            | £3,000 |
| Over six months                     | £1,500          | £7,500 |

Where the previous financial year began on or after 6 April 2008 and those accounts were delivered late the above penalties are doubled.

## Modernising tax relief for business expenditure on cars



Budget 2008 announced the abolition of the current rules for “expensive cars”, replacing them with an environmentally based pooling system. The rate of writing-down allowance (WDA) will be based on the CO<sub>2</sub> emissions of the car.

The restriction on allowable lease rentals for businesses that lease or hire cars will also be based on the CO<sub>2</sub> emissions of the car.

The new rules will generally have effect on and after 1 April 2009 for businesses in the charge to corporation tax, and on and after 6 April 2009 for businesses in the charge to income tax.

### Capital Allowances

From April 2009 the special rules that restrict the amount of capital allowances for cars costing more than £12,000 will be abolished and replaced by new rules. Qualifying expendi-

ture incurred on or after 1 or 6 April 2009 on cars will be allocated to one of the two general plant and machinery pools. The pool that is appropriate will depend on the car’s CO<sub>2</sub> emissions. Expenditure on cars with CO<sub>2</sub> emissions over 160g/km will be dealt with in the special rate pool and will attract WDAs at 10%. Expenditure on cars with CO<sub>2</sub> emissions greater than 110g/km but up to 160g/km will be dealt with in the main pool and will attract WDA’s at 20%. Expenditure on cars with very low CO<sub>2</sub> emissions (up to 110g/km) will continue to qualify for 100% first year allowances.

Cars that have an element of non-business use will continue to be dealt with in a single asset pool to enable the private use adjustment to be made, but for expenditure incurred from April 2009 onwards the rate of WDA will be deter-

mined by the car’s CO<sub>2</sub> emissions.

### Car Hire

From April 2009, the special rules that restrict the amount of lease rental payments that can be deducted for tax purposes for a car costing more than £12,000 will be reformed.

The restriction will be changed to a flat rate disallowance of 15% of the deduction that would otherwise be allowed and apply only in respect of cars with CO<sub>2</sub> emissions above 160g/km. It will only apply to one lessee in a chain of leases (in most cases to the last business user).

Expenditure under leases that commenced prior to 1 or 6 April (that is where the car is made available before April 2009) will continue to be subject to the “old” rules.

## What can I do now?

If you require further information in relation to any of the above matters, or indeed would like to discuss your tax exposure please do not hesitate to contact us.

The information and topics raised in this newsletter are for guidance only and should be used as such. Professional advice should be sought before taking any action on the information contained herein as no responsibility can be accepted by Royce Peeling Green Limited, the publishers, or distributors, for any loss occasioned to any person, firm, etc. as a result of action taken or refrained from as a consequence of the contents of this newsletter.

This letter is based on our interpretation of current legislation. The value of tax concessions may change and will depend on individual circumstances. Favourable tax treatment may not always be available and this newsletter cannot take into account future changes in legislation.

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