



**W**elcome to the Spring Edition of GENIE. Together with this edition we are circulating our annual budget summary for 2006. For the first time ever though, we have included on the inside covers of that booklet a tax calendar and a tax year planning checklist which I would urge you to have a look through for items that may be relevant to your circumstances. As ever, the Partners and Team at Gerald Edelman look forward to receiving any feedback on any of the articles in this edition or within the Budget Summary. *Colin R Burns*

# Not a Single Penny More!

## A Day Pension Protection

Following A-Day (6 April 2006), the maximum that anyone will be able to have invested in their Pension Fund without the possibility of a penal tax charge of 55% when taking benefits, is £1.5 million. This limit will rise each year. The amount will be known as the lifetime allowance.

However, if your Pension Fund already exceeds this lifetime allowance on A-Day, then don't despair as there are two options you can apply for which will enable your Pension to be protected if you are already over this limit.

Investors will have three years, from April 2006 up to April 2009, to apply to the Inland Revenue for protection under either or both schemes. However, you may need to decide before A-Day in order to ensure that you are eligible (see the "Enhanced Protection" section below).

## Primary Protection

If your fund or Pension rights at A-Day are valued at over the £1.5 million lifetime allowance, you can apply for primary protection to cover existing benefits in excess of the allowance and obtain a "personal lifetime allowance". For example, if your Pension was worth £4.5 million on A-Day, that would be 300% of the lifetime allowance. This means the value of your Pension will always exceed the lifetime allowance by this percentage. Using the 300% example, if the limit was increased to £2 million, you would be allowed £6 million. Any growth in excess of your personal allowance would be taxable at the 55% rate.

## Enhanced Protection

Enhanced protection is available for any size of Pension Fund. However, by applying for enhanced protection, you can't make further contributions to any Pension Fund from A-Day onwards. This will include contributions made into Employer Schemes, although contributions made as a condition of membership to a final salary scheme would not be counted.

Under Enhanced Protection, there wouldn't be a tax charge, even if



you exceed the lifetime allowance when you take your Pension. This may be suitable for someone who already has a substantial pot saved. Both types of protection are reversible on application to the Inland Revenue. The important point to stress here is that whilst we have three years to make the Election until April 2009, if a single penny is paid into a personal scheme after A-Day, then you

will cease to be eligible to elect for Enhanced Protection. This could be a huge disadvantage for people with substantial sized funds, so be warned!

Members of our Financial Services Team would be happy to review your Pension arrangements to ensure that you make the right choices on A-Day.

*Colin R Burns & Graham Thomas*

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# The Steps to AIM

**T**he Alternative Investment Market sometimes known as the Junior Market has grown up. Since its launch on 19 June 1995 a total of £17.3 billion has been raised and AIM has firmly established itself as the world's leading growth company market. Last year 226 companies joined AIM the most in a single year since the market began.

## Eligible Companies

Junior markets such as AIM offer major growth opportunities for smaller companies. One of the principal reasons for AIM's success is its accessibility in that a company does not need a track record as long as it has a good business plan and good management. Clearly, if the company has a good trading record than so much the better as investors will always be looking for evidence of growth potential. In market capitalisation terms the company can be any size and there is no longer an expectation that companies should go from AIM to the Official List once they grow to a relative substantial size.

Indeed, AIM began life as a springboard to the main market of the London Stock Exchange. Initially, few investors were attracted to the Junior Market with many of the larger institutional investors focussing on the main market. Investors quickly realised however that smaller had the potential to attract much larger returns than established stocks and the dot com boom of the late 90's secured AIM as a leading international market for start-ups and mid cap companies looking to raise funds.

More recently larger financial institutions have embraced AIM and its self-regulating nature. They realise that the superior returns that may be available are perhaps not as risky as they appeared in the early days. In essence they are backing the adviser and the broker that bring the company to the market as well as the company itself.

## Overseas Companies

The last 12 months have seen a large number of mineral resource companies raise vast amounts of money on the AIM market. Resource companies now account for over 10% of listed companies and many of them are overseas companies who are looking to cash in on the current investor confidence in the sector.

Currently there are 134 overseas companies listed on the Junior Market and that number keeps on growing. It appears the diversity of these companies that is boosting the market and international interest is on the increase and not purely based in the resource sector.

## Regulation Changes

In July of this year new prospectus regulations came into force implementing the EU Prospectus Directive. The additional strain that these regulations place upon public offers which now require prospectus' to be approved by the FSA are seen by many as an unnecessary regulation of AIM.

The regulations should only apply when issuing prospectus and the focus of the companies advisers will be on determining whether a prospectus is truly necessary. Many people close to the market are confident that AIM will still retain its flexibility.

Aside from the regulation changes AIM faces a dilemma of definition. Whilst it was launched and functions amiably as a junior market it now appears that as companies are no longer moving onto the main market there is an increasing disparity in size within the market itself. There are various schools of thought that believe there is a risk that AIM could become too big to service the needs of smaller companies particularly in terms of the perceived and actual benefits that such companies expect from the market such as secondary fundraising, visibility and liquidity. Admission to AIM is not an end in itself, once a company is on the market it needs to be seen to be pro-active to maintain and build investor interest. The right financial PR together with a robust business should result in a company being able to attract publicity although inevitably the national press will always look at a larger cap company.

AIM also faces a challenge from Europe's two newest markets – Alternext and the IEX. Formed almost to the blueprint of AIM the offshoots of the French and Irish Stock Exchanges are looking to attract mid companies to its deregulated shores. For the time being however AIM remains a solid option for companies looking to raise funds. There is no other stock market in the world in effective competition with AIM although the principal challenges for AIM are maintaining its flexible regime and continuing to build its reputation internationally.

## The Role of the Advisers

The nominated adviser or NOMAD is the most important adviser who essentially warrants the stock exchange that the company is appropriate for joining AIM.

The first task of the NOMAD is to get to know the company and form an in principle view that the company is likely to meet the widely drawn suitability criteria which AIM requires. Such criteria will include appraising the prospects for the growth of the business, the quality of the management team and a critical analysis of the business plan. The NOMAD will also assess the potential appeal of the company to investors by analysing the nature of the business and the current market opinion of its sector.

Once a NOMAD has satisfied itself that the company meets the suitability criteria then it will conduct its own detailed due diligence on the company which will incorporate accounting and financial due diligence which are normally carried out by the solicitors and reporting accountants. Once due diligence has been completed then the process moves towards introducing the company and its management team to brokers and potential investors in order to secure the funding required by the company.

Following commitments from investors a placing agreement is entered into and the company then

publishes its prospectus and puts in its application for its shares to be admitted to trade on AIM.

The role of the NOMAD is ongoing in that AIM requires that the company retains a NOMAD for the entire time that it is on the market. One of the ongoing functions of the NOMAD is to ensure that the company complies with its regulatory obligations through out its public life.

The other main adviser is the Broker. It is the broker's responsibility to gauge the level of interest in the company shares and advise them of pricing and placing of the shares with investors. The broker will remain with the company long after the Initial Public Offering (IPO) and the choice of broker is clearly an important decision that the company needs to make.

Whilst the NOMAD is responsible for ensuring the company is suitable for listing on AIM, it is the broker to whom the institutions look to provide reassurance that it is a suitable investment proposition. The broker will also advise the company on the timing of the IPO, the size of the fundraising that is achievable and the valuation raised that ought to be targeted.

The broker will also lead the production of the marketing strategy to the potential investors which will include a road show of presentations to institutions. The broker will follow up the presentations with discussions with the institutions to ensure the proposition is fully understood and to establish the demand for the proposition.

## Reporting Accountant

The Reporting Accountant such as Gerald Edelman is responsible for reviewing and auditing the company's finances for potential investors. In many cases it is the Reporting Accountant that will introduce the company to the NOMAD and the Broker and will clearly be involved in the pre-IPO planning stage in looking at developments or actions that may be required by the company to achieve the business plan and advice will also be given on whether a flotation is achievable and desirable. Further matters that will need to be reviewed at the pre-IPO stage would be a review of the accounting policies, the introduction of employee incentive schemes and the recruitment of suitable non-executive directors.

Once the team of advisers have been appointed the reporting accountant has two principal roles. The first is to provide specific advice on the taxation and accounting issues relevant to the company whilst the second is to undertake the financial due diligence on the business. This second aspect will involve the preparation of the detailed Long Form report which is a report into the principal financial and taxation aspects of the company including its assets, trading record, cash flows, accounting policies and information systems. The report is not on public record and is normally addressed to the NOMAD, the Broker and the company's board. The report will support much of the information that will be included in the AIM admission document/prospectus.

The prospectus will include a Short Form report

# UK Real Estate Investment Trust (REITs)

**I**t now seems likely that legislation will be included in the 2006 Finance Bill to allow the formation of REITs with effect from 1 January 2007. I thought it would be useful if our many property clients were aware of the new tax treatment for such REITs. They will:

(1) Not pay corporation tax on qualifying property rental income or qualifying chargeable gains that relate to “ring fenced” business. They will pay corporation tax on other activities in the normal way at 30%.

(2) Be required to distribute at least 95% of their net taxable “ring fenced” profits to investors who will then pay at their own marginal income tax rate on the “property” income but who will not be able to set personal property losses off against such income.

(3) Be required to withhold basic rate tax on the distribution paid to investors.

Qualifying activities (“property rental business”) will be the UK and overseas property business but with excluded classes consisting of a number of non main stream rental activities such as the incidental lettings generated by a property development trade and the letting of temporarily surplus business accommodation.

In order to be eligible to be classified as a UK REIT, a company must satisfy eight conditions relating to the company, four conditions relating to its activities and two conditions relating to the rest of its business and I summarise these as follows:

## Company Conditions

(1) It must be UK resident for tax purposes and not resident anywhere else. (It can however be incorporated outside the UK but must be resident for tax purposes in the UK).

(2) It must not be an open ended investment company (OEIC).



(3) It must be listed on a recognised Stock Exchange (the AIM market does not currently qualify under this definition).

(4) It must not be a close company ie, under the control of five or fewer persons.

(5) All issued shares must be “ordinary” and there is only one class of such shares.

(6) It must have no person directly or indirectly controlling 10% or more of the shares or voting rights.

(7) It must have not convertible shares.

(8) It must use international accounting standards.

## Business Activities Conditions

A tax exempt business (TEB) means a “property rental business” that meets four conditions. They are:

(1) It has had at least three properties throughout the accounting period.

(2) No single property can be more than 40% of the total value (cost) of the TEB properties during the accounting period.

(3) It must exclude “owner-occupied” properties (ie, the UK REIT or another company whose shares are stapled to those of the UK REIT).

(4) 95% of the profits must be distributed by way of dividend within six months of the end of the accounting period.

## Balance of Business Conditions

### Asset Test

The value of assets in the tax exempt business must be more than 75% of the total value of the company’s assets.

### Income Test

75% of the total income is from tax-exempt business total income where:

(1) Total income is income from the TEB plus other income of company.

(2) TEB income is profits from UK and overseas properties, net of capital allowances and interest charges.

(3) Other income of the company is profits from other activities as calculated for corporation tax purposes.

There will be a “one-off” conversion charge for companies becoming REITs which may be computed by reference to the inherent gains in existing property estates.

It is likely that there will be some changes to the above before the proposals become firm law. For example, it is felt that the 10% shareholding restriction may cause problems in practice and HM Revenue & Customs want interest relief restricted to two-thirds of the profit of the TEB, but we will keep you updated with any changes in subsequent editions of GENIE.

Colin R Burns



# Funding for the Future

By Bibby Financial Services

**I**The factoring industry was established in the UK more than 35 years ago and in that time, the industry has experienced highs and lows. In the mid 1980's, the involvement of a factoring company was seen as the last gasp of a dying firm.

Today, however, nothing could be further from the truth. Solutions such as factoring and invoice discounting are growing in popularity and are no longer seen as the last chance saloon for failing businesses – it is now seen as a real and viable alternative to other more traditional means of business finance. Today there are almost 42,000 businesses using factoring and invoice discounting as a means to finance their business with a total of £70.9bn of funds being injected into UK businesses.

## So what is Invoice Finance?

**Invoice Finance takes two forms - Invoice Discounting or Factoring.**

- Invoice Discounting provides funding against unpaid invoices so that every time your business raises an invoice, the invoice financier will turn up to 85% of the value of that sales invoice into cash within 24 hours of it being raised. The remaining 15%, less a small service fee, is paid to the business once payment has been received. This service can be confidential where your customer is unaware of the invoice financier's involvement.

The service is suitable for businesses turning over in excess of £1 million per annum.

- Factoring is the same as invoice discounting but your customer is aware of the factors involvement because they undertake a full collection service, which includes sending out statements, making reminder calls and collecting in payment.

- Confidential Factoring is the same as Factoring but your customer is unaware of the invoice financier's involvement. This still includes full collection service and ledger management but all correspondence is in your name and not the invoice financier.

Businesses using a factoring facility can also save costs on postage, stationery, telephone calls and most importantly it allows the managers to spend their time more productively developing business instead of chasing payment.

## Finance that evolves with the business

The benefits of an invoice finance facility to a business is that it not only receives an immediate cash injection into the business but it also gains access to an on-going source of funds that is linked directly to current sales. It can improve profitability as the business can pay suppliers early, buy in larger quantities and take advantage of any volume discounts that are available.

The beauty of invoice finance is that as businesses get larger and more successful, this innovative form of funding can grow with them. Whilst start up businesses may initially use factoring to improve their cash flow, as they grow and become more established, they may consider invoice discounting which provides all the benefits of factoring, without the credit control.

In short, invoice finance not only helps to keep cash flow healthy, but also provides finance for growth and allows the management team to do what it does best: driving the business forward. With so many benefits, it is little wonder that invoice finance is overtaking the more traditional forms of business finance.

## When is invoice finance most appropriate?

Invoice finance is ideal for fast growing enterprises, which often lack the cash flow to fund expansion plans. Unlike bank loans and overdrafts, which take no account of a company's changing circumstances, invoice finance offers significant flexibility. As sales increase so does the amount of working capital that the invoice financier can make available – and without need for renegotiation.

There are a number of situations where Invoice Finance may be the appropriate form of finance.

- New start business
- Established business experiencing growth
- Businesses with cash flow difficulties
- Businesses operating in a seasonal sector Restructures
- MBO's & MBI's as a result of slow-paying debtors Recovery e.g. CVA's

## What does it cost?

**There are two fees involved.**

The first is for the cost of the finance used. This compares favourably with the cost of a typical bank overdraft.

The second is for the service you receive which on average is between 0.5% and 3% of the annual turnover but it depends on your industry and the number of invoices you raise. This cost needs to be compared against the cost of your existing credit control team and the savings the business will make.

Never decide on cost alone, consider the quality of service you receive and ensure you are comparing like for like.

**For more information call us today on 01424 205 923 or visit our website [www.bibbyfinancialservices.com](http://www.bibbyfinancialservices.com)**

# News From our Business Recovery Team



Bernard Hoffman

## Bankruptcy Restrictions Orders Start to Bite

**B**ankrupts acting dishonestly either before or during the bankruptcy face strict sanctions. The Official Receiver (OR) may apply to the Court for a Bankruptcy Restrictions Order (BRO), which can last from two to 15 years, depending on the Court's judgement of the behaviour. This means the person is subject to the restrictions of bankruptcy for that period. An individual can make a Bankruptcy Restrictions Undertaking which has the same effect as an Order, but means the matter does not have to go to Court.

### Case Study 1

Elliott Sandat, a 28-year-old self-employed driver from Romford in Essex, declared himself bankrupt in November 2004, with liabilities of £79,352 accrued through credit and store cards, two loans and legal fees.

The Official Receiver looked into the case to establish whether Elliott Sandat had contributed to his bankruptcy through his own misconduct. He found that Mr Sandat and his wife had sold their jointly-owned house in June, realising £46,282.

Although Mr Sandat knew he was insolvent and a creditor had successfully obtained a County Court Judgement for £1,074 against him, in July 2004 he withdrew £36,000 from his joint bank account – his half of the equity plus £12,859 of his wife's money. He then travelled to Las Vegas on 6 August and in two days lost all the cash gambling, leaving no money to pay his creditors. A BRO was made against him for a period of eight years.

### Case Study 2

By 1 September 2004, 31-year-old Phillip Hoare had debts of at least £35,920 and was considering bankruptcy. He resigned from his job on 21 September 2004 believing that he could not serve as a police officer if bankrupt, but between 20 September and 30 November 2004 he ran up additional debts of £21,529 at a time when he knew, or ought to have known, that he had no reasonable prospect of meeting the repayments as he had failed to obtain alternative employment.

He failed to provide the OR with a full and satisfactory account of how he had spent £21,760 withdrawn as cash during this period. He claimed to have spent it on prostitutes, gambling, alcohol and his social life, though he could provide no proof of this.

Nor did he adequately explain what happened to his Honda motorbike and a cherished number plate. He said he had sold them for £300 and £150 respectively, even though the items had been advertised for £3,995 and £3,000. The OR was unable to verify the sale prices or what happened to the money.

Mr Hoare also made a repayment of £3,000 to his parents at the end of September in preference to his other creditors, when he knew he was insolvent.

The OR considered that Mr Hoare's actions had disadvantaged the majority of his creditors and therefore sought a BRO. The bankrupt agreed that the allegations made against him in the OR's report to Court were accurate and gave a Bankruptcy Restrictions Undertaking for a period of eight years.

By Bernard Hoffman

For further information on bankruptcy Restriction Orders please do not hesitate to contact either Bernie Hoffman on 020 8492 5600 or Ian Yerrill on 01233 666 280.

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## The Steps to AIM

compromising a summary of financial information from the company's latest published sets of audited accounts. Another important element of the Reporting Accountants work is the review of the board's working capital protections and the underlying assumptions. This review seeks to ensure that the company has sufficient working capital for at least 12 months from admission to AIM. The output from the review is either the preparation of a board memorandum covering the working capital projections or a separate working capital report addressed to the NOMAD, Broker and the board.

### The Solicitor

The company's solicitors will draw up all agreements surrounding the flotation. The solicitors will also be responsible for the due diligence process including drafting the various documents and supporting information that are included in the prospectus and other documents.

The solicitors will also normally advise the directors on the various aspects of

their responsibilities as directors of a public company which is supported by a formal responsibilities memorandum. Directors of a public company need to be aware of their legal responsibilities for the admission document as well as the legal and regulatory responsibilities involved in being an AIM company including corporate governance.

The solicitors will carry out legal due diligence on the company's business ensuring that it has good title to its assets and will prepare a formal report identifying issues to be resolved before admission can be finalised.

The solicitors will often normally be involved at the pre-IPO planning stage if any restructuring needs to be considered. There may be shareholders' agreements that need to be brought to an end and share capital reorganisations that need to be put in place. It may also be appropriate to put in new service agreements or employee incentive schemes.

Richard Kleiner

# Changes to Directors' Reports in Financial Statements

**R**egulations\* have been issued which expand the requirement for companies to include a fair review of their business in the directors' report. This expanded review is a requirement for all companies (except those exempt as small – see box below) and applies to all financial periods beginning on or after 1 April 2005.

The Department of Trade and Industry has issued guidance on the changes. It explains that the directors' report must now contain a **fair review of the business** of the company and a **description of the principal risks and uncertainties** facing the company.

In summary, the business review must:

- Be a balanced and comprehensive analysis of the development and performance of the company during the financial year, and the position of the company at the end of the year.
- Be consistent with the size and complexity of the business.

- Include analysis using financial key performance indicators (KPI's) to the extent necessary for an understanding of the development, performance or position of the company.
- Where appropriate, include analysis using other KPI's, including information relating to environmental and employee matters, and
- Where appropriate, include references to, and additional explanations of, amounts included in the company's annual accounts.

According to the DTI's guidance, information on the company's annual future plans and prospects should be included to the extent necessary:

- for a balanced and comprehensive analysis of the development, performance and position of the business.
- to describe the principal risks and uncertainties facing it, and
- to provide an indication of likely future developments in the company's business.

## Which companies are affected?

All British companies must include the new business review in their directors' report, except those meeting the statutory definition of a small company (i.e. Turnover of £5.6m or less; Gross Assets £2.8m or less; 50 or less employees. A company qualifies if it satisfies two out of these three conditions).

Companies meeting the statutory definition of a medium-sized company have to prepare the business review, but are not required to include information about non-financial KPI's. However the DTI guidance says they are 'strongly encouraged to report, where appropriate, on these issues voluntarily'.

All individual companies in a group (other than small companies) must produce a business review.

**\*The Companies Act 1985 (Operating and Financial Review and Directors' Report etc) Regulations 2005 (Statutory Instrument 2005 No.1011).**

## DTI sources of information

**The DTI's guidance on the changes to the directors' report requirements in the Companies Act 1985 is at**  
**[www.dti.gov.uk/cld/N00002IU.pdf](http://www.dti.gov.uk/cld/N00002IU.pdf)**



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