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WELCOME TO MACHINS 360 YOUR GUIDE TO COMMERCIAL LAW

Welcome to Machins 360: a round-up of topical commentary on the changing landscape of the legal world. Whether it's planning a merger or acquisition, considering property investments, or ensuring your employment practices remain compliant, Machins 360 will equip you, and your business, with the relevant knowledge and business insights to anticipate what's ahead.

Combining topical articles from across our corporate, employment & immigration, property, litigation teams the first edition arrives at a pivotal moment as businesses across different industry sectors grapple with the implications for the economy of the Chancellor's 2024 Spring Budget announcement on 6 March 2024.

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Richard Murrall, Senior Solicitor in our Company Commercial department, kicks off this edition by unpacking the Budget's key takeaways and the potential impacts for your organisation.

Machins 360, your trusted source for legal advice. We hope you will enjoy reading it as much as we enjoyed writing it.

SPRING BUDGET – KEY HIGHLIGHTS FOR BUSINESSES

Richard Murrall, Senior Solicitor, Company Commercial

Jeremy Hunt delivered his Spring Budget on 6 March, and it will probably be his last major fiscal announcement ahead of this year's anticipated general election.

With a focus on reducing tax for the working population and helping parents, there were several announcements in the Budget that affect businesses and employees which I consider and comment on below.

NATIONAL INSURANCE REDUCTIONS

The good news for employees is that from 6 April 2024 the Government will reduce the main rate of primary Class 1 National Insurance Contributions (NIC) from 10% to 8%. For a worker earning £35,000 they will therefore see a saving in NIC of approximately £1,000 a year.

The good news continues for the self-employed as the Government will introduce legislation to reduce the main rate of Class 4 NIC by 2 percentage points from 8% to 6% from 6 April 2024. This is in addition to the reduction that had already announced in the Autumn Statement taking the rate from 9% to 8%.

These further cuts will take effect from 6 April 2024, meaning workers will see a one third reduction in their main rate of NIC compared to April 2023. This is the largest ever cut to employee and self-employed National Insurance. However, with income tax thresholds frozen until April 2028 the fiscal drag continues to have an impact.

Finally, the Government will launch a consultation later this year to deliver its commitment to fully abolish Class 2 National Insurance.

This undoubtedly is a welcome giveaway for both employees and the self-employed and should see a little in everyone's pockets. However, it is unlikely to offer much for business as the freeze in income tax thresholds means that everyone is unlikely to see that much more in their pockets in real terms and so no real change to what people have to spend on the high street.

VAT THRESHOLD

From 1 April 2024, the taxable turnover threshold which determines whether a person must be registered for VAT, will be increased from £85,000 to £90,000. This should give a boost to small businesses. The taxable turnover threshold which determines whether a person may apply for deregistration will be increased from £83,000 to £88,000.

Although any increase is welcome, it may not be enough to keep up with inflationary pressures. If the threshold had risen with inflation from 2018 it would be £108,048 today and £112,000 by 2025/26.

SPRING BUDGET - KEY HIGHLIGHTS (CONT.)

CORPORATION TAX

The Government will introduce legislation in the Spring Finance Bill 2024 to set the charge for Corporation Tax as it does every year. It will maintain the main rate at 25% and the small profits rate at 19%, for the financial year beginning 1 April 2025 as previously announced.

FULL EXPENSING

Full expensing, providing 100% corporation tax relief for capital expenditure on plant and machinery, has been extended to cover leased assets.

This is good news for a number of businesses that have internal plant hire companies, who were previously excluded from claiming the super deduction and full expensing.

EXTENSION OF RECOVERY LOAN SCHEME

The Recovery Loan Scheme will be extended for two years, under the Growth Guarantee Scheme moniker. The Treasury report said that the scheme was helping 11,000 businesses get funding.

MORE INVESTMENT IN GREEN INDUSTRIES AND MANUFACTURING

Up to £120m more to be invested in the Green Industries Growth Accelerator fund to build supply chains for new technology ranging from offshore wind to carbon capture and storage.

The Chancellor announced a further £270m of investment into new automotive and aerospace research and development (R&D) projects, building the UK's capabilities in zero emission vehicle and clean aviation technology.

£1BN IN ADDITIONAL TAX RELIEF FOR THE CREATIVE INDUSTRIES

An additional £1bn in tax relief has been announced for the creative industries.

This includes:

- a new UK Independent Film Tax Credit for films with budgets up to £15m.
- scrapping the 80 per cent VFX (visual effects) cap



OVERALL

Though there have been some positive moves for businesses, commentators have suggested the announcement was lacking overall with many believing this was a budget for a general election, not for business growth.

A persistent challenge to all businesses is rising energy costs and it was unfortunate that the industrial energy cap was not reduced.

As expected, nothing was mentioned in terms of business rates, which continue to create barriers for businesses and hold back growth.

PLANNING DECISIONS & THE BIODIVERSITY NET GAIN (BNG) SCHEME

Simeon Clipstone, Partner, Commercial Property

Perhaps it was a slow news day but watching the news over breakfast this morning I was interested in an article concerning local residents who turned out in their hundreds to help thousands of frogs and toads cross a busy road! So what does this have to do with planning decisions for commercial properties? From 12 February 2024, the Government has introduced the BNG scheme as a new compulsory condition on planning permission decisions which is likely to impact tens of thousands of planning decisions each year.

The legislation sets out to provide sites scored on a biodiversity metric and gains can be established both onsite or offsite, and on land also owned or controlled by that developer or through the acquisition of biodiversity credits (units) through the purchase of statutory credits.

It seeks to ensure development (usually small or large housing developments) has a positive impact on the biodiversity of the site delivering a net gain when compared with the pre-development position. As always, the devil will be in the detail, and this will become clearer over the weeks and months ahead as developers and their professional advisers get a feel for how they establish a 10% net gain.

Property Developers will also want to be aware of this and surveyors will be gearing up to offer Property Developers expert advice on biodiversity gain in their planning applications.

Developers will of course be very familiar with Section 106 Agreements and Community Infrastructure Levies (CILs), but the new BNG regime takes this to a whole new level.

No doubt a marketplace will quickly evolve for the acquisition of biodiversity credits and a register is being established. Greater credit will be available for biodiversity gains on the site itself with a reduced level of credit available for offsite gains. DEFRA (the Department for Environment, Food and Rural Affairs) has published indicative prices from around £42,000 up to £650,000 which is understood to be in respect of a site rather than development units or acreage.



HATS OFF – AVOIDING DEADLOCK IN BUSINESS OWNERSHIP

Jackie Cuneen, Partner, Employment Law

Business owners, particularly in small businesses, can often wear too many hats. Whether it be as a shareholder, director and/or employee, each of these hats carries very different rights and responsibilities:-

Shareholders: investors in the business and their relationship to each other is governed by the Companies Act and any shareholder agreement (if one is in place).

Directors: responsible for the day-to-day running and decision making of the business. Their obligations to the company are set out under the Companies Act. They have a duty to shareholders to act in the best interest of the company.

Employees: employed by the company to provide services under a contract of employment. They have various legal rights and duties under their contract and statute such as the protection from unfair dismissal and unlawful discrimination.

The positions of shareholder, director or employee are not mutually exclusive and business owners are frequently all three.

For many businesses the founders are close friends, family or marital/civil partners all with two shareholders each having a 50% stake. Those two people tend to be the sole directors and are usually employed in key management roles.

All goes well to start with but fast forward down the line, what if someone wants out or wants someone else out? The relationship breaks down; the roles have grown; there are performance or conduct issues; the business is going in a different direction or there is an unexpected life event such as divorce or long-term illness?

This can often result in a deadlock scenario with business operations in paralysis due to the conflicting rights. They cannot work together but no major decisions can be made because as the sole directors they have equal voting rights and won't co-operate. They potentially cannot manage the other's performance nor can they suspend or terminate employment as they do not have overall authority over the other.

It's easy in hindsight but taking advice early on is crucial when you are first setting up your business or planning succession. Putting mechanisms in place via a shareholder agreement and tailored articles of association to deal with exit events is vital. Equally, implementing appropriate employment contracts gives greater certainty around duties and roles and can protect your business when the employment relationship is coming to an end. To be effective, the contract should cover the duties, responsibilities, reporting lines of senior employees and directors, it should detail the disciplinary process and, crucially, the authority to discipline. It should also set out the arrangements surrounding termination arrangements such as the notice periods and an obligation to resign a directorship in the event the employment comes to an end. Finally, it should set out the obligations of confidentiality and detail the post termination restrictions that are appropriate to protect the business.

FIXED RECOVERABLE COSTS – SO WHAT’S BEEN FIXED?

Benedict Smith, Associate, Dispute Resolution

The introduction of fixed recoverable costs (FRC) has been described as the biggest change to civil litigation for a decade. The FRC regime will attempt to fix the amount of legal costs that the successful party can claim from the unsuccessful party in litigation. The aim of the reform is to provide certainty to parties in dispute about their maximum costs liability, which in turn should make commercial decisions on the cost/risk analysis of disputes clearer.

Previously, parties to a dispute would face the uncertainty of not knowing whether pursuing or defending a claim at court would be commercially viable. Claimants being awarded damages that did not cover their legal bill or Defendants incurring legal costs that exceeded the sum in dispute were not uncommon, meaning at the end of often lengthy litigation the successful party was left with a hollow victory. There had been reform of costs management in court proceedings in April 2013, including the introduction of costs budgeting, aimed at reducing what were considered unreasonable and disproportionate legal costs, but the introduction of FRC is a further sea change regarding litigation costs and one likely to be welcomed by parties seeking certainty as to their potential exposure.

From 1 October 2023, most civil claims up to the value of £100,000 will be dealt with under FRC and the amount of costs payable by one party to the other at the conclusion of proceedings will be calculated by reference to the value of the claim and the point at which the claim concluded. It is hoped that the costs of litigation will become more certain and FRC will lead to an increase in earlier resolution to disputes, as well as improving access to justice and preventing parties being priced out of litigation.

The vast majority of fast-track claims (being those claims with a value of up to £25,000) will be dealt with under FRC. A new ‘intermediate track’ has been introduced, within which less complex cases valued between £25,000 and £100,000 will be dealt with and which should also deal with claims more efficiently by implementing a streamlined procedure. FRC will not be applied to those claims in excess of £100,000 and the most complex cases. Having been allocated to either the fast track or intermediate track, claims will be banded according to complexity, band 1 being the simplest claims and band 4 being the most complex.

The exact amount of costs payable by one party to the other under FRC will be calculated by reference to the complexity of the claim and the point at which the claim concluded. More complex cases and a conclusion later in the proceedings will lead to higher costs being recovered, whilst simpler cases or earlier settlement will lead to lower costs being recovered.

By way of example, a defended debt claim of £20,000 would likely be assigned to the fast track and be given a complexity banding of 1. If the claim was settled on or after the date that the court lists the claim for trial but before trial takes place, a costs award of £3,800 would be made. However, if the defended debt claim was for £50,000 then the claim would be assigned to the intermediate track, with the same complexity banding of 1. If the matter were to settle at a similar stage (stage 6, up to and including the date set for the pre-trial review or up to 14 days before the trial date, whichever is earlier) then the costs awarded would total £13,400 (£5,900 plus an amount equivalent to 15% of the damages).

FIXED RECOVERABLE COSTS – SO WHAT’S BEEN FIXED? (CONT.)

In practice, the introduction of FRC should mean that from the outset of a dispute parties can assess with greater certainty their exposure in relation to costs. The FRC regime addresses only the costs that will be recoverable from the unsuccessful party: it does not impact upon the costs that will be charged by legal representatives. However, having an exact figure for the costs that will be recovered or payable to the other side should assist in the commercial decision of whether to proceed with or defend a claim.

The significant impact of the listing of claims on the different tracks and the complexity banding to be applied will impact on how disputes are dealt with from the outset; it is likely that a party’s position on these key issues will now be set out in pre-action correspondence, with lengthy negotiation and argument to follow. There will also be great interest in how the exemptions to FRC will be applied by the Courts. No doubt there will be updates in the coming months as to how the new rules are being applied in practice. However, as a first step in offering certainty to the question of whether litigation is worthwhile, the FRC is likely to be welcomed from a commercial point of view.

If you would like to discuss or need help or support on any of the issues above then please contact 01582 514000 or visit www.machins.co.uk



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