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**SWP 75/91 UK TAX IMPLICATIONS FOR
THE SMALL BUSINESS**

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INTRODUCTION

There are reportedly only 2 certainties in life; death and taxes (divorce after all is probably a combination of these two!). While the great truism in business is NEVER to do something simply because of taxes, nonetheless tax planning and being aware of tax implications of decisions, is important particularly in starting a business.

This paper briefly summarises a number of articles on the impact of tax in a number of important start up areas:

- 1) **Company formation**; financial year end tax implications.
- 2) **Self-employment**; tax treatment (joint earnings, use of home, motor expenses, capital allowances and pension).
- 3) **Employing people**; taxation forms.
- 4) **The growing business**; adding a partner and incorporating.

Some of the figures quoted will need to be verified, as a result of frequent indexing/changes to allowances in U.K. budgets.

1) **Company Formation and year-end tax implications**

A BUSINESS start-up can operate as a company, a partnership or a sole proprietorship - whichever is most appropriate. Even if a business does not start as a formal company, the proprietor is likely to apply for company status once a reasonable level of profitability has been achieved.

Most individuals therefore start in business as sole proprietors or as a partnership. As "Business Development Cases" explains: "For sole traders or partners, rather than limited companies the most efficient year-end from a taxation point of view, is some time shortly after 6 April in each year. Although the bases of taxation of the first three years of trading are complex, the underlying reason for the choice of the year-end date early in the year is because unincorporated businesses are taxed on what is known as the 'preceding year basis'. Accordingly, the profits of a company for, say, the year ending 30 April 1990 would not be taxed until 1991/2.

There are, of course, other factors in addition to taxation which might influence the choice of year-end. These include seasonal factors in the business which would result in an unacceptable administrative burden being imposed by an accounting date set in the midst of the busiest trading period. In addition, some accountants may be in a position to offer a faster or more efficient service to clients who have accountancy periods ending in the profession's quieter periods, usually between June and November.

If neither of these factors seem particularly important, most would agree that 30 April would be the most appropriate year-end. On the 'preceding year basis' therefore, you would not pay the tax on any profits for the year to 30 April for 20 months, i.e. until 1 January almost two years later! Even then, you would be

required to pay only half of the tax due, with a further six months, i.e. until the following 1 July, to pay the remaining 50 per cent."

You should inform the Inland Revenue that you are now running your business (reference form 4/G) with the proposed year end.

As a sole trader, you may choose to operate under a tradename that suits your business, different from your own name. In this case you should take steps to protect this name as it may be valuable later (check Yellow Pages for Trade Mark Agents); your business note paper should indicate your actual address where you as a sole trader can be contacted.

2) **Self-Employment - Tax Implications**

For some people, it may be necessary to establish whether for tax purposes they are self-employed or not. As Brian Jenks (Observer 6 May 1990) explained:

"If you start your own business - selling goods or supplying services to a wide range of customers - or go into partnership with others, it is obvious that you are self-employed.

Equally, if you are a full-time employee of a company, with an appropriate contract, it is obvious that you are employed. However, there are many cases where it is not clear and where you may, by your own actions, be able to influence your status. Take note: computer buffs, financial consultants, lorry drivers and gardeners. Then again, you may have taken early retirement and be working part-time for your previous employer, as well as carrying on outside work for other businesses.

Generally speaking, it is attractive to be treated as self-employed because:

- The income or profit derived from your business activity will be subject to income tax on a 'previous year' basis sometime - after you have received it - whereas income from employment is subject to tax at the time of payment under the PAYE arrangements.
- Expenses can be deducted from self-employed earnings, providing they are 'wholly and exclusively' incurred for the purposes of the business. The expenses you may claim as an employed person must meet the additional test of being 'necessarily' incurred in the performance of the duties of your employment; an altogether more stringent and difficult test.
- Self-employed people pay a flat rate of national insurance of £4.55 per week, plus a profits related contribution (up to a maximum of £803 per annum). In the case of employed people, both employer and employee contribute. On income up to £18,200 the combined rate is 19.45 per cent.

On the other hand, the self-employed must register for VAT if his supply of goods or services exceeds £35,000 in the year. What must also be considered are the administration costs involved in being self-employed: the need to keep records of income and expenditure, along with business expenses such as travel, stationary, telephone and typing.

However, when you are in this borderline area between employed and self-employed, you will need to satisfy the Inland Revenue and the Department of Social Security before you can be accepted as self-employed. Until this is done, you are likely to be dealt with as an employed person and those for whom you

work will be required to deal with you as if you were an employed person, deducting PAYE and National Insurance accordingly.

The basic test applied by the authorities in determining your status is to ask: 'Is the person who has engaged himself to perform these services or supply these goods doing it as a person in a separate business under his own control?' or, put another way, is there a contract of service (which means employment) or a contract for services (which means self-employment)?"

Having established that you are self-employed, registering to pay Class 2 or 4 National Insurance contributions to the DHSS, you may now consider specific items including:

- a) wife's/husband's earnings;
- b) use of home for business;
- c) motor expenses;
- d) capital allowances;
- e) pensions.

As "Business Development Case Studies" explains:

- a) Wife's/Husband's Earnings

"A wife/husband's wages could be deducted from profits, as a normal trading expense, provided that the remuneration was reasonable, given the nature of the employment, and also that the payments had been made and recorded in the company's books. You can pay up to £40.00 a week without having National Insurance liabilities and, if there was no other income, income tax would not be payable unless earnings exceeded £2,605 in the tax year. Clearly, this is a tax

efficient method of increasing the family's earnings and, at the same time, taking full advantage of tax and National Insurance 'allowances' which would otherwise be lost at the end of the tax year.

b) Use of Home for Business

For discussion's sake, let us assume that the family lives in a three-bedroomed semi-detached house in which one of the six rooms had been turned into an office. Apparently, as a result, one sixth of the house running costs, including rates, heating, lighting and repairs and insurance could be charged against business profits for tax purposes, as follows:

Use of home as office	
6 rooms: kitchen, lounge, 3 bedrooms, bathroom	
	£
	<hr/>
Rates	475
Water	60
Insurance	65
Repairs	200
Gas/Electricity	1,000
	<hr/>
	1,800 p.a.
1/6th chargeable as business expenses =	300 p.a.

Great care is needed in reaching a decision to charge these costs as a business expense because of the impact of rapidly rising house prices. In the normal course of events the family's main residence is exempt from capital gains tax, but where, say, one-sixth of the house has been used continuously for business

purposes, then the gain, related to the proportion of the house, is chargeable to capital gains tax at 25-40 per cent provided it exceeds the annual exemption limit of £5,000!

In many circumstances this could be disadvantageous. However, where such arrangements are likely to be temporary, an alternative view may be taken. If you have lived in the house continuously since 31 March 1982 (the date from which capital gains are deemed to arise), then, provided you recover the expenses of working from home for no more than 2 years and sell the house after eight years, house prices will have needed to rise by 300 per cent before any capital gains tax liability would arise, as detailed below:

	£
Selling price	178,500
Date of sale 31 March 1990	
Less Value of house at 31 March 1982	(45,000)
Gross gain	133,500
Less Indexation allowance at 31.3.90 (say 30% x £45,000)	13,500
Net gain	120,000
Apportioned by number of rooms used for business purposes	
<u>120,000</u>	
6	<u>20,000</u>
Time apportioned, for	
<u>number of years used for business</u> number of years occupancy	
= $\frac{2}{8} \times 20,000$	5,000
Less CGT exemption (per person/ married couple)	(5,000)
Chargeable gain	<u>nil</u>

c) Motor Expenses

If you had a van, used for business purposes only, acting as both a delivery and storage vehicle, then all of the costs associated with the van could be charged to the firm and would be allowed as expenses deducted from profits for tax purposes.

The position of a private car is more problematic, as it would be used for at least two purposes:

- i) own company business
- ii) family domestic and social activities

The simplest approach would be to record all the miles covered on business, pay all the bills from your private bank account and charge the business for the miles covered at a mileage rate calculated by the AA. This would be similar to the method used by major employers."

Otherwise, the Inspector of Taxes will only allow, after negotiation, a proportion (%) of running costs from total mileage covered by car. Remember in both approaches, home to office mileage is not allowable, being treated as private motoring.

d) Capital Allowances

You should endeavour to minimise some of your early capital investment as the following example from Business Development Studies demonstrates:

"WPM had taken a short lease on some small offices in the centre of town. Peter felt it was essential to present a professional image and therefore spent £5,500 on renovation, decoration and new partitioning prior to moving in. Perhaps surprisingly, none of this was allowable for income tax purposes! Redecoration would have been deductible as a repair had the firm moved into the offices long enough before repainting, to demonstrate that the facilities were fit for the purpose intended. This expenditure would then have been treated as repairs and allowed as a trading expense.

In addition, had the new partitioning been movable, this could have been treated as fixtures and fittings and subject to capital allowances which could be offset against the profits at the normal rate of 25 per cent per annum. As it was, the cost of improving the offices could only be recovered against any future *capital* gains once the lease on the office had expired.

The new office computer was discussed next. The equipment was expected to last only three years before it was replaced. It was also felt that at the end of that period there would be no resale value because the pace of technological change was so high and costs of purchasing new equipment were continuing to fall.

Under the normal capital allowances regime 25 per cent of the value would be charged against taxable profits each year. It would thus take eight years to recover 90 per cent of the cost. The accountant also explained that under current legislation, even when the computer was finally disposed of, there would be no adjustment allowing the firm to recover the balance of the cost. Instead

the 25 per cent allowance would continue to be claimed even though the asset was no longer owned by the business!

Table Capital allowances

Office improvement	nil	
Computer	25% p.a. (i.e. 8 years = 90%)	
Short-life assets election		
time limit: 2 years irrevocable		
Effect	Depreciation per accounts £	Capital allowances £
Year 1	1,333	1,000
Year 2	1,333	750
Year 3	1,333	2,250

However, as noted in the above Table, under the Finance Act of 1985 it was now possible to elect that this type of asset be treated differently. In order to take advantage of this concession, an election had to be made within two years of the end of the accounting year in which the computer was purchased.

The result would be that at the date of disposal of the equipment, the balance of the cost not yet allowed under the normal capital allowances rules would be written off against the taxable profits in that year. There would of course be more work required in order to maintain separate records of this type of asset."

e) Pensions

If you are making profits on your enterprise, you ought to consider setting up your own self-employed pension scheme. If you are under 50 years of age, you

are allowed to make tax deductible contributions up to 17½ per cent of earnings for each year. "Any unused relief can be carried forward for six years and payments made in a particular year can be carried back to the previous year or in certain circumstances to the year before that.

An example of the calculation is shown in the Table below. As pension fund investments within an 'approved fund' build up tax-free, in addition to the contributions being tax-deductible, there is not doubt that this is an extremely efficient method of saving."

Table Pensions

17½% of net relevant earnings of year (<50)
 Carry forward unused relief: 6 years (FIFO)
 Relate payments back 1 or 2 years

Elect before end of tax year.

Example,

Taxable profit	20,000
Max pension	3,500
Taxable income	<u>16,500</u>
Personal Allowance	4,095
Taxable income	<u>12,405</u>
<i>Tax payable x 25% =</i>	<u><u>3,010</u></u>
Cost of pension	3,500
Less Tax saved (3,500 x 25%)	875
<i>Net costs of pension</i>	<u><u>2,625</u></u>

SUMMARY: ALLOWABLE BUSINESS EXPENDITURE

In order to be allowed as a deduction for tax purposes all expenditure incurred by a sole trader, partnership or company must be incurred wholly and exclusively for the purposes of the trade, profession or vocation.

(ICTA Section 130)

ADVERTISING AND PROMOTION:

- Advertising
- Business gifts (subject to certain restrictions)
- Direct mail and door to door campaigns
- Trade fairs and exhibitions
- Public relations
- Entertaining overseas customers or their agents.

DEBTS:

- Bad debts
- Doubtful debts (to the extent that they are estimated to be bad)
- VAT on bad debts (except where recovered from Customs and Excise).

EMPLOYEES:

- Compensation for loss of office
- Employer's Liability (Compulsory) Insurance
- Employer's share of Class 1 National Insurance contributions
- Pensions paid to former employees or their dependants
- Redundancy payments
- Secondment of employee to charity or educational body
- Training courses for employees or past employees - (subject to restrictions)
- Wages and salaries; payments to outworkers and sub-contractors
- Welfare services, include staff entertainment.

HIRE OF ASSETS:

- Reasonable charges for hiring capital goods (allowable only on the proportion of hire-care use attributable to business purposes).

INTEREST ON:

- Hire-purchase of goods bought for business use
- Money borrowed for business purposes
- Mortgage or loan to buy property for business use or to be let commercially.

OVERHEADS:

Insurance of premises
Light, heat, etc
Rates: general, water
Rent
Telephone, telex

OFFICE ADMINISTRATION:

Agency fees for permanent and temporary staff
Books and publications
Postage
Printing and stationery.

PROFESSIONAL FEES AND CHARGES:

Annually recurring accountancy fees
Bank charges on business accounts
Debt collection
Insurance against loss of profits, public liability, theft, etc.
Legal fees (except where connected with acquisition of capital assets)
Registration of trade mark, expense of taking out a patent
Subscriptions to trade associations and journals and professional bodies.

REPAIRS AND MAINTENANCE:

Decoration of premises
Laundry, cleaning
Repairs and maintenance of plant and machinery
Repairs and maintenance of premises
Replacement of small tools, overalls, etc.
Servicing business equipment.

TRADING ACTIVITIES:

Delivery charges, carriage, packaging
Discounts allowed to customers
Goods or materials for re-sale
Materials used for purposes of trade or business
Royalties paid to patent or copyright holders.

TRAVEL:

Running costs, insurance and maintenance of business vehicles
Running costs, insurance and maintenance of private car so far as it is used for business
Subsistence and hotel bills when away from home on business
Travel expenses when on business trips in the UK or overseas.

VAT: If not registered and therefore unable to reclaim it *as input tax*.

3) Employing People - taxation forms

At some stage you will want to take on staff. Your first thought may be to use casual labour. You can pay a person up to £45.99 per week with no tax or national insurance consequences providing they have no other employment. You may also be thinking of sub-contracting your work. This is a very grey area as there is a fine line of distinction between an employee and a sub-contractors.

If you give instructions as to:

What work to do,

How to do it,

When to do it,

Where to do it,

then the Inland Revenue will regard the person as your employee. Even if you have treated the person as a sub-contractor the Inland Revenue will come to you for the tax and national insurance contribution (NIC). The payments made to your sub-contractor will be treated as the net amount and grossed up for the tax and national insurance that should have been deducted. You will have no redress against the sub-contractor unless you have something in writing covering such a situation.

You may have doubts about taking on an employee if you are uncertain about the amount of work available but remember you can always offer a basic salary with an additional amount for each piece of work completed.

Having determined that you wish to take on an employee you will need to apply to your local Inspector of Taxes for a PAYE scheme on form P223.

Upon registering you will receive various leaflets explaining how to operate PAYE. Several of the forms that you will come across are as follows:

- P9** Is the form notifying the employer which code to operate when calculating the tax due for the relevant employee. Once a code number is issued it remains in force until the Revenue notify you of a change. The code represents the tax allowances that the individual is entitled to and the tax is deducted by reference to tax tables.
- P11** This is the deduction working sheet on which you record the salary paid and deductions made.

End of Year Returns

- P14** Is the end of year return for each individual. This is in 3 parts - 2 go to the Revenue
- 1 = P60 and goes to the employee.
- The P14 is due to the Revenue by 19th May following the tax year end (5th April each year).
- P35** Is the summary end of year return and shows the total tax, NIC, SSP & SMP for each employee.
Again it is due to the Revenue by 19th May.

- P11D** This shows details of expense payments and benefits provided to employees earning £8,500 p.a. or more and Directors. It is an annual form and is due to be completed and returned by 6th June.
- P9D** This shows details of expense payments in excess of £25 that have not been subject to tax in respect of lower paid employees. Again this is due to the Revenue by 6th June.

Other Employee Tax Forms you will come across

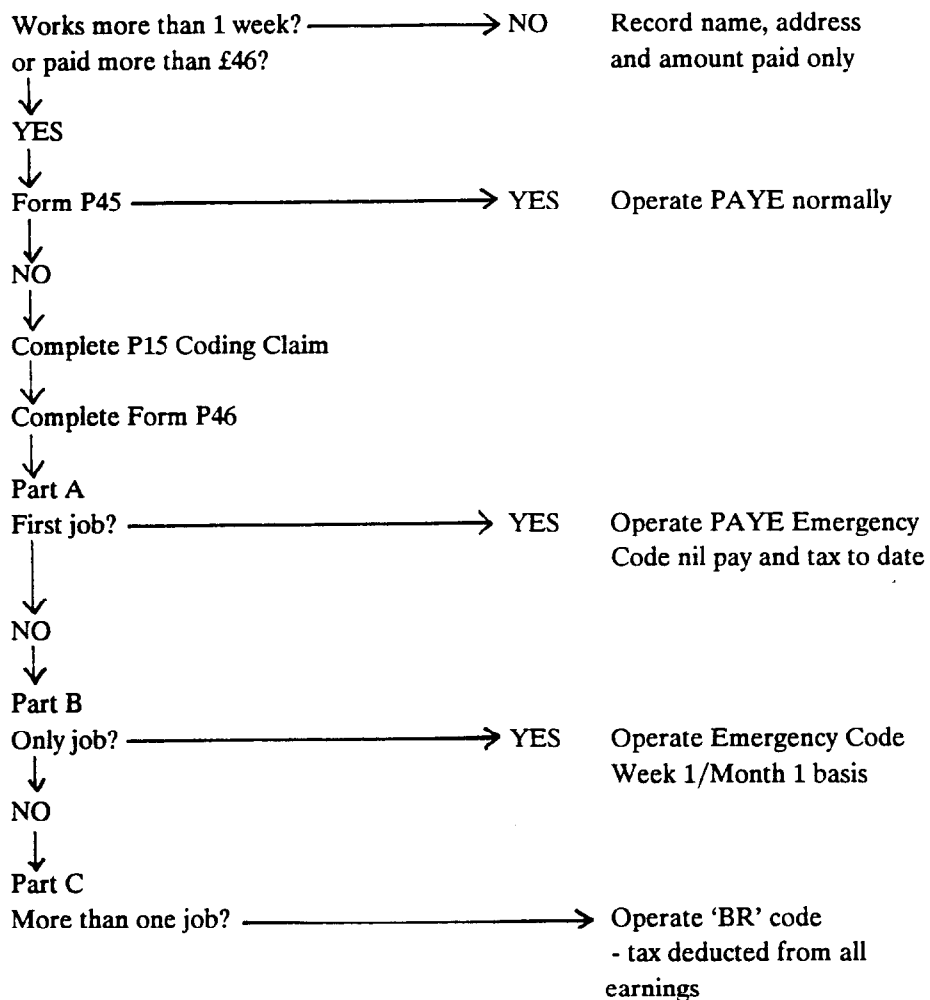
- P45** This is the form that is completed upon leaving an employment and shows total pay and tax to date in the tax year and the code number in use. This is passed to the new employer in order that tax can be deducted at the correct rate.
- P46** This must be completed by any new employees that do not have a P45 to pass to their new employer.
- P15** Is a coding claim form that is used to claim the correct personal allowances. Again this is used where there is no P45.

Penalties for late submission of returns are gradually being introduced. These will come fully into force in 1995 but penalty proceedings will be started now for returns over 3 months late.

The actual tax and NIC deducted in one month is payable by the 19th of the month. Remembering that tax months end on the 5th of each month this gives you 14 days to make the payment over.

Fun, isn't it, particularly when you remember that should you, as the employer, fail to operate PAYE correctly, then the responsibility for any tax and national insurance which would have been payable, falls on your shoulders!

Employee Action Summary: Casual employee hired



Source: Business Development Cases

4) **The growing business: adding a partner**

When un-incorporated businesses change their composition, either through the admission of additional partners, or their leaving, strictly the business is treated as ceasing for tax purposes. It is possible, however, for the business to be treated as continuing, provided the Inland Revenue is notified on the appropriate form within 2 years of the date of change. The following example, from Business Development Case Studies, shows how the balance sheet could be reconstructed to admit a new partner:

BALANCE SHEET PRIOR TO ADMISSION OF NEW PARTNER

<i>Fixed assets</i>		£
Equipment, fixtures, etc.		20,489
Motor vehicles		11,963
		<u>34,452</u>
<i>Current assets</i>		
Debtors	30,139	
Stocks	29,821	
Cash in hand	176	60,136
		<u> </u>
<i>Less: Current liabilities</i>		
Trade and other creditors	26,361	
Hire purchase	6,727	
Bank overdraft	17,662	(50,750)
		<u> </u>
<i>Total net assets</i>		<u>41,838</u>
<i>Capital accounts: PETER WILLS</i>		<u>41,838</u>

BALANCE SHEET AFTER ADMISSION OF NEW PARTNER

		£
<i>Fixed assets</i>		32,452
<i>Current assets</i>		
Debtors	30,139	
Stocks	29,821	
Cash at bank and in hand	3,433	63,393
		<u> </u>
<i>Less: Current liabilities</i>		
Trade and other creditors	26,361	
Hire purchase	6,727	(33,088)
		<u> </u>
<i>Total net assets</i>		<u>62,757</u>
Capital account:	PETER WILLS (2/3)	41,838
	ALAN RANDELL (1/3)	20,919
		<u> </u>
		<u>62,757</u>

In admitting Alan Randell as a partner entitled to one-third of the profits and net assets of the business, Peter Wills has used Alan's cash injection (raised by borrowing against house security) to eliminate the business bank overdraft and improve cash at bank.

NEW PARTNER: SUMMARY OF IMPLICATIONS

1. Old business ceases.
2. Up to three years assessments can change.
or
3. Continuation election may be advantageous if taxable profits continue to grow per partner.
4. Election to be made within two years of Change.

BECOMING A LIMITED COMPANY

The practical implications of later changing to limited company status when neither partner might wish to continue to bear personal responsibility for increasing large sums of money in the business, were well described by Brian Jenks (Observer, 5th August 1990):

"Business incorporation means legally forming or acquiring a company - a process which not all businessmen are familiar with.

When incorporating, the majority of small business owners choose private limited company status which leaves the option open to convert to a public limited company at a later date.

The formation of a company is best handled by a professional - usually an accountant, solicitor or registration agent. Although it is possible to form your own tailor-made company, the process can be expensive. More common practice is to acquire a 'ready-made' or 'off-the-shelf' company, which is available for immediate use and can be restructured to specific requirements.

It may be necessary to change an off-the-shelf company's name to a more appropriate title. It is essential to ensure that the required name is available, is not too similar to that of an existing company and does not risk misinterpretation. A professional adviser should be able to check on this within a matter of hours.

As a rough guide, the purchase of an off-the-shelf company, alteration of its name and articles to suit individual needs, the issue or transfer of initial subscribers' shares, the appointment of directors and a company secretary - the essential steps needed to put a company on the road - is likely to cost some £800, although the price will be higher should there be any complications.

Every company has two principal constitutional documents - the Memorandum of Association and the Articles of Association. The Memorandum defines the company's objectives, states the amount of capital and confirms limited liability, while the Articles contain the company's internal regulations. In practice, the Articles follow closely the specimens in the Schedules to the Companies Act.

Recent legislation has paved the way for what will be known as a 'General Commercial Company' with general, short form, objectives. However, additional clauses may have to be added to clarify such matters as borrowing powers and the establishment of pension schemes.

A copy of the constitutional documents is deposited at Companies House, along with a statement of share capital, details in respect of the directors and secretary, and the registered office address.

All companies must have at least two shareholders who can be either British or foreign individuals or corporate bodies acting as beneficial owners or through nominees.

The initial amount of issued share capital will depend on the nature of the business and its capital requirements. professional advisers will be able to recommend the scale of capitalisation, and many private start-ups begin with as little as £100 fixed capital. Additional funds can be injected later.

All private companies must have at least one director and a company secretary but a sole director cannot act as secretary. When company ownership is equally divided between proprietor directors and outside shareholders it is advisable to establish, at an early stage, a mechanism for resolving disputes. Deadlocks between proprietors and directors can prove exceedingly damaging.

A company cannot begin to trade until the Certificate of Incorporation is issued and directors appointed.

A company's registered office is its legal address where documents can be served, and is frequently the factor which decides the company's tax district. For this reason, many small companies use their account's address as their registered office. The company name must be conspicuously displayed outside every place of business.

Registration of a company for Value Added Tax purposes can be made through local Customs and Excise Offices, while an employees' PAYE scheme can be set up by application to a local inspector of taxes.

When making arrangements for banking facilities, a bank manager will require a corporate mandate form with specimen signatures and sight of the Memorandum and Articles of Association, the Certificate of Incorporation and any Certificate of Change of Name.

An early task for a newly-incorporated company is to arrange stationery supplies. The Companies Act 1985 and European Communities Act stipulate certain details for inclusion on letterheads. These are: the full corporate name (including the word 'limited'), the company registration number, the country of incorporation and the registered office address. If appropriate, invoices and statements must also state the VAT registration number.

If a company uses an abbreviated or trading name and a trading address, such details can be given in smaller print at the foot of the page. All other information is optional.

Every company should select and register a date on which its statutory accounts will be prepared (Accounting Reference Date). Because such accounts must be audited the board should appoint qualified auditors at an early stage. The auditors can then give advice and assist with many of the required post-incorporation formalities.

Once a company has been formed, there are certain responsibilities. Each year accounts must be prepared and audited, and an Annual Return filed which details shareholders, directors, and the company secretary. If there are any

changes during the year, a return must be made so that the company's file is up to date."

So, now you know!

Further Reading:

1. Croner's Subscription Service: "Reference Book for Self Employed and the Smaller Business" (tel: 071 942 8966).
2. Business Development Case Studies. "From Acorns to Oaks", Peter Chisnall and Francis Chittenden, McGraw Hill.