Which brings us to the question of when payment is made. A cheque is easy – the payment is (by statute) treated as made on the date the cheque is received by the Revenue (provided it clears on first presentation). But as more and more of us pay our bills by telephoning cheerful people at call centres in the middle of the night, what's the effective payment date for electronic transfers? The Revenue's long-standing practice in regard to CHAPS and BACS has been to treat the payment as received one working day before the date that value is in fact received and *Tax Bulletin 22* extends this to other electronic transfers. In marginal cases therefore it is worth checking exactly when monies did get transferred, particularly where (as in 2004) 31 January falls at the weekend.

From Brass Tax, the online tax consultancy service of Berg Kaprow Lewis.

152. New Revenue debt collection procedure

It was reported in earlier issues of *TAXline* that the Inland Revenue planned to take a more aggressive stance to its debt collection in respect of self assessment liabilities. It now appears that this may become a reality. It is making more use of summary proceedings in the local Magistrates' Court for recovery of debts. This procedure will be rolled out over the next few months for all self assessment debts. Tax due by 31 January 2004 is being caught. We understand that there is a £2,000 cut-ff although we would welcome confirmation. In addition, very small amounts are already taken out of the self assessment collection system on the statement of account. However, tax agents need to realise that they will not be receiving a copy of the notice sent to the client, so it may be wise to contact clients who may be at risk.

153. Bed & breakfast and section 419

... or teeming and lading. Call it what you will.
A loan made to participator of a close company is a common enough thing. Most people recognise the fact that liability arises under s 419 where the loan is to an individual. It can, incidentally, arise in some less obvious situations – for example, it doesn't matter that the individual participator is not resident in the UK; and a loan made to trustees will be within s 419 even where there are corporate trustees. Thus s 419 may apply where a loan is made to the trustees of an EBT or a FURBS.

Section 419 provides that liability arises unless the loan in question is repaid within nine months of the end of the accounting period in which it is advanced. In theory it is possible to carry on year after year repaying the loan eight months and 30 days after the end of each accounting period, re-loaning the money nine months and one day after the end of the period, and never becoming liable to pay tax under s 419.

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(The text at this point has been with...
Code of Practice on Access to Government Information.)

This is never good news and, roughly translated, means: *We aren't about to tell you how we'll attack this scam, but rest assured that attack it we shall.*

Bed and breakfast your s 419 liabilities if you must. But don't say we didn't warn you ...

From Brass Tax, the online tax consultancy service of Berg Kaprow Lewis.

154. Certificates of tax deduction

Last month we ran a point by Colin Keene on tax certificates in which the Building Society paid interest of £700 but charged a £300 penalty for early withdrawal. Since the point was published, some readers have queries the treatment suggested in the article.

We suspect that the precise position will, as always depend upon the facts. Surprisingly, there appears to be little guidance on this area even though the situation must occur regularly in practice and we would welcome further views on this topic. In these circumstances, if there is any doubt, it would make sense to disclose the treatment which has been adopted in the white space.

155. When is a businessman not a developer?

The Barker Review proposes a new 'development land tax' that could bring in a tax at the point planning permission is obtained. It is interesting therefore to look at when the disposal of land for development can be the trade of land development and when not.

Development is not defined by statute. The Inland Revenue interpretation is any physical adaptation or preparation for new use of land.

The increase in value created by planning consent, representing the difference between agricultural value and development value can raise problems if matters are not thought through first.

The development by, for example, a farmer himself of houses for sale will be an adventure in the nature of trade as a developer or property dealer. The question of whether or not there is a trade should be dealt with as part of the tax review when planning permission is obtained and the alternatives considered. These criteria can apply to general businesses as well as farmers, eg a factory or shop site with planning permission for houses.

If the landowner becomes a developer, land previously held as a farm asset will be appropriated to the trading stock of the new trade. On this change of status, CGT arises on a deemed disposal at market value (s 161, TCGA 1992). An election under s 161(3), TCGA 1992 will normally be sensible. However, a farmer who has previously owned land with no intention of selling does not necessarily become a property developer merely because he takes steps to enhance the value of the property in the eyes of a developer who might want to acquire the land for development (*Taylor v Good* [1973] STC 383).

There are circumstances where it must be accepted that the trade of property developer has started and the eligibility to CGT reliefs ceases. There are many practical tax planning points to consider.

A well established farmer who moves to property development runs the risk of having profits taxed at the top rate of 40 per cent compared to the exceptionally beneficial CGT rates helped by BATR. There is also a VAT trap in that zero rating is immediately lost.

There is every reason that with any disposal of land for development that qualifies for 'untainted' Business Asset Taper Relief (BATR) the Inland Revenue will look to s 776, ICTA 1988 to try and capture the gain as income and taxed at the top rate of 40 per cent. Has the landowner been trying to shelter development profits in farming or business activities? If so, the treatment needs to be examined and the risks made clear to the client.

Contributed by Julie Butler FCA, Butler & Co, Alresford, Hampshire.

156. Problems with the new childcare allowance

'Qualifying week' is defined in new s 318A(6) as a week in which care is provided for a child in circumstances in which conditions A to C are met. I understand that commercial nurseries normally require parents to book and pay for places up to one term in advance, or at least a month in advance. If the child does not attend the nursery for some reason, such as a holiday, the childcare place must still be paid for. Where the company has contracted with the nursery to pay the first £50 per week of fees, those fees will have to be paid even if the child is sick and cannot attend the nursery. If the child does not attend for a whole week that week will not be a qualifying week. In that case the parent will be taxed on the £50 paid by the company for that week. The fact that the parent is taxed because the child is sick seems quite wrong.

The notes to new s 318A indicate that the employer will have to contract directly with the nursery for the childcare to be tax free up to £50 per week. This requirement is not made clear in the legislation. However, if the employer does have to contract directly with the nursery this is likely to cause problems. Will the nursery accept a three-way contract between itself, the parent and employer? Will nurseries be prepared to draw up a complicated contract that requires the employer to pay the first £50 of fees per week and no more? Will employers have to keep copies of the contracts for each of the employees' children that prove the employer contacted directly to pay £50 per week and did not meet a personal liability of the parent? Just how much paperwork will this provision create?

Contributed by Rebecca Cave, Director, Taxwriter Ltd.

157. Irrecoverable loans to traders

An interesting case has been heard by the Special Commissioners (*Crosby and others v Broadhurst* SpC 416) on the application of the tax relief for loans made to traders which becomes irrecoverable.

The appellants were trustees of a family settlement which had made loans of some £250,000 to a trading company founded many years ago by the now deceased settlor. By 1992 the company was in financial trouble and the Revenue accepted that the loans were then irrecoverable. The shareholders were able to secure a sale of the company which was completed on 5 March 1992. One condition of the sale was that the trustees should execute a deed of waiver and release of the loans. The company went into receivership in 1993. The trustees then claimed a capital loss of £250,000 on the loans under s 253, TCGA 1992. This was refused. The Inspector accepted that the loans were 'qualifying loans' within the meaning of s 253(1), that they had become irrecoverable before the waiver was executed, and that the waiver did not come within sub-s (12), ie the loan had not become irrecoverable as a result of the waiver. His refusal to allow the claim was based on a Revenue view that, at the time a claim for relief under s 253 is made, the loan must remain in existence, whereas here the loan had been extinguished by the waiver, which predated the claim.

The Revenue based their argument on the words *has become* irrecoverable in s 253(3)(a), which in their view implied, as a matter of English usage, a loan