tlp - news

April 2012

The monthly newsletter of The Long Partnership and Graeme M Fraser & Co.

www.thelongpartnership.co.uk

Let's Get Real or Let's Not Play.

We want you to succeed. We know our products and services have helped clients' success in the past. Our intent is always to find a solution that exactly meets your needs. This helps to ensure a good fit between what we do and what you need. If there is a good fit, let's work together.

Call us today!

Kirkwall 01856 878600
Thurso 01847 890304
Inverness 01463 710166
Elgin 01343 540388

Quotes

"If you can find a path with no obstacles, it probably doesn't lead anywhere."
-- Frank A. Clark

"Courage is not limited to the battlefield. The real tests of courage are much quieter. They are the inner tests, like enduring pain when the room is empty or standing alone when you're misunderstood."
-- Charles Swindoll

"Whatever you can do or dream you can, begin it. Boldness has genius, power and magic in it."
-- Johann von Goethe

"To see what is right and not do it is a lack of courage."
-- Confucius, philosopher

April is tax conference season and I have just returned from the Spring Conference of the Institute of Taxation with plenty of ideas, lessons and some warnings to share with you. Space is limited so, if you see something that you think may be relevant, get in touch with one of us and we can expand on it further.

One of the hot topics just now is the consultation that is ongoing into the introduction of the "GAAR" - General Anti-Abuse Rule. HMRC have been fighting to close down various artificial tax avoidance schemes but they have to find them first, and then introduce legislation to stop them.

The GAAR would be an over riding rule that would enable them to neutralise "artificial and abusive tax avoidance schemes" as soon as they find them.

Is this the start of something else? Where will this lead? At the moment, most people will agree that some highly paid lawyers and a few much lesser paid accountants are involved in devising artificial schemes that only wealthier individuals can afford to pay for. This is a vibrant industry but difficult to justify when times are so hard for us lesser mortals.

However, how will the Revenue officials use a GAAR and against whom? At the outset we expect it to be used against costly and elitist tax avoidance schemes. But, what about the "tax avoidance" that the rest of us are regularly undertaking? .

Have you incorporated to save tax? We did. Will there be circumstances where there is no other commercial justification for such action, where a Revenue official, whether "on" or "off" message, attacks that tax avoidance tactic i.e. incorporation. I am certain that we can justify our incorporation on commercial grounds, and not just in terms of obtaining limited liability, because we are an "unlimited" company. Nevertheless I think we are safe. Are you?

Now, don't get me wrong. I do not think this approach will be adopted immediately, but once the rule is in place and accepted, where will HMRC go with it and what new rules may follow in Budgets to come. Time will tell.

Anyway, some new faces for you. In Kirkwall we have been joined by Laura Foulis (an escapee from OIC) who has links to the Island of Westray. Mairi and Nicola, both in Kirkwall, have been breeding and we welcomed Hamish and Edgar safely into the world earlier this year. All are doing well.

On another topic, I get a number of newsletters myself and one of them recommended a book. The Art of War by Sun Tzu dates back 2500 years in China. It is a fascinating (and very short) book concerning how to wage war and plan campaigns and the strategies for fighting battles. It struck a chord with me given the problems we all face doing business at the moment.

We are all fighting our campaigns. We have our victories, our gains, our defeats and set backs, but although bruised we generally live to fight another day. Some are not so lucky.

We have our allies who we are pretty sure we can rely on and we have our strategic alliances, who we can only rely upon while our objectives are aligned and then they could turn into adversaries. You guessed it, I am talking about banks here. When they are "on our side" they are our friends and supporters but they can turn the other way if their goals and objectives stop being aligned with yours and mine. Can you relate to this?

Where are the Revenue in this theatre of war? They are not really the enemy, but they are certainly no ally of business, otherwise they would have more understanding when it came to difficult times, and would accommodate rather than sequestrate. They are more akin to pirates, following their own path and reaping their own rewards for their own ends. Allies to no-one, strategic alliances (time to pay arrangements) occasionally. But, if you are in business, you just want to steer a course that does not take you into pirate infested waters, and a skirmish with HMRC.

"Once more unto the breach dear friends..."

Charities

A salutary tale - could this be happening to you?

A charity owned some land in Central London that was part of its historic endowment but that was no longer required in any form. It had been a school but the school activities had relocated.

The charity entered into an agreement with a developer under which the developer was to develop the site for housing taking half the houses for itself. The remaining houses would either be sold by the charity or retained.

The charity was not trading in its own right. However, it had fallen foul of an anti avoidance measure that catches a gain of a capital nature which is obtained from the disposal of all or part of land which has been developed with the sole or main intention of realising a gain from disposing of all or part of the land. A gain is of a capital nature if it does not fall to be included in any calculation of income for tax purposes.

You might be thinking that this was a simple and very reasonable joint venture that the charity trustees had undertaken as a way of raising funds from the disposal of a property that was no longer required. You may even be considering something like this yourself.

I could give you more examples. This is not an isolated case.

So, what should the trustees have done?

First - transfer the land to a trading subsidiary. The gain by the charity is exempt from capital gains tax and there is no SDLT on the transaction as long as there is a corporate group. So, if your charity is not incorporated, you may need to tackle this step first.

Second - the subsidiary enters into a contract with the developer.

Third - Subsidiary makes a trading profit.

Fourth - Subsidiary makes a gift aid payment of the profit to the charity which is tax deductible in the subsidiary and not taxable (it is a donation) in the charity.

Easy, when you know how!

The Budget - Selected Highlights

Income Tax Rates and Allowances and Dividends

Personal allowances have been raised substantially to £8105 but the basic rate band of income has been reduced. This means that if you are on a low salary / dividend strategy from your company, the maximum dividends that you, as an individual, can take assuming that you have no other income, is reduced to £30933. Above this level you pay tax at 32.5% or higher on the net dividend .

For 2013/14 the equivalent level of divided payment is further reduced to £29020 before you pay higher rate tax.

Tycoon Tax

From 6 April 2013 there will be a cap on claims to loss reliefs, gift aid claims and other income tax reliefs. It does not affect pension contributions or EIS claims.

This will not affect many taxpayers because it is designed to limit reliefs to £50000 or 25% of income and so will only affect a small number of people. However, we are yet to see the affect on tax losses augmented by large claims for capital allowances.

Child Benefit - now taxed if the highest earner Earns £50000+

If the highest earner of a couple earns £50000, the child benefit is tax free. At £60,000 is wholly taxable at 40%. In between these limits the taxable proportion gradually increases.

IHT - Non UK Domicile Spouses

The normal interspouse exemption does not apply if your spouse is not UK domicile. The limit of tax free transfers has been £55000. This is now being raised to £325000. If both spouses are UK domicile all transfers are exempt.

Corporation Tax Rates

The full rate is now 24% and the small profits rate (<£300000) is 20%. The suspicion must be that the two rates will be merged in due course. So, although the marginal rate for profits above £300000 is 23.75%, it is low enough almost to ignore.

Enterprise Zones

New Enterprise Zones have been announced for Irvine, **Moray**, Edinburgh, Glasgow, Prestwick, the ports of Dundee and Leith, **Lyness in Orkney**, **Arnish** in the Western Isles and Nigg and **Scrabster**.

The benefits include:

1. Simplified planning restrictions
2. 100% FYA for plant acquired by UK resident companies for use in the Enterprise Zone subject to the following conditions:
    - Expenditure incurred in 5 year period starting on 1 April 2012.
    - For the purposes of a trade of one of the designated concerns.
    - To set up a new business or expand an existing business or in connection with a fundamental product change.
    - The plant must be new and unused.
    - The plant must not be a replacement and it must perform a function which is different from the company's other plant and equipment.

Also:

The company must not be in financial difficulty (as defined)

It must not be engaged in Fisheries or aquaculture, waste management, coal, steel shipbuilding or synthetic fibres or primary agricultural production.

The maximum level of qualifying expenditure is 125,000 Euros

Capital Allowances on low CO2 emission Cars

Businesses purchasing low CO2 emission cars are eligible to claim 100% capital allowances on the cost of such vehicles up to 31 March 2013, now extended to 2015 but at a reduced CO2 level.

CO2 emissions to 31 March 2013	110g/km
CO2 emissions to 31 March 2015	95g/km

In addition the emission threshold up to which ordinary cars will are eligible for 18% WDAs will fall from 1 April 2013 from the current 160g/km to 130g/km. Cars with CO_2 emissions above these limits go into the special rate pool and only attract 8% WDAs per annum.

Pension Contributions for Family Members

Where an employer pays a pension into a registered pension scheme for a member of the employee's family as part of their flexible remuneration package, this is currently a tax free benefit and no NIC is charged. The contribution also courts towards the individuals annual pension contribution allowance and not the employees.

Legislation is to be brought in next year to put an end to these advantages.

Capital Allowances for Fixtures in Buildings

A time limit is being introduced for adding fixtures to the pool for claiming capital allowances. There is a new profession that is growing rapidly involving surveyors identifying fixtures in building from years ago resulting in late claims for capital allowances at times when it is difficult to HMRC to validate the claims. The time limit in future is likely to be as short as a year.

In addition, where the purchaser of a building wants to claim capital allowances on fixtures, they must first agree the value of fixtures formally with the seller so that both parties account for the same value.

Tax Efficient Ways to Get Cash from Your Own Company

You will be familiar with the widely used "low salary + dividends" strategy for getting profits out of your company. However, if you want to take money out in different proportions to your shareholding or in situations where you do not have positive reserves and therefore cannot legally take a dividend, what can you do?

You could consider any of the following:

Director's Loan Account withdrawal - if you have used up your personal allowances and basic rate band but still need some extra cash, check the balance on your loan account to the company. This is money that the company owes to you and so, subject to the company having available resources, you can withdraw it anytime without paying tax. It will not appear on your tax return or be used to determine the amount of tax you pay for that year.

Rent - does your company occupy property that you own? However, you need to consider the possible effect on Entrepreneurs Relief if you might want to sell the property. We can advise on this.

Interest - do you have a director's loan to the company. You could pay commercial interest but remember you need to deduct tax from the interest and account for it on a form CT61 to HMRC. We can help with this. The rate of interest will be the same as the company would be charged for high risk and unsecured lending from a bank or other financial institution so the rate will be a "good" one.

Pension Contributions - this is a very tax efficient way of extracting cash. You do not get your hands on it but you get the benefit (eventually) and you do not pay tax when it comes out of the company. It is not treated as your income for tax purposes.

SIPPs - consider funding a SIPP by transferring funds from existing pension schemes that you may have been paying into for many years. Use the SIPP to buy an office, workshop or other property that the company needs. The rent paid to the SIPP is tax deductible in the company's accounts and is paid to the SIPP and funds your pension. There is also no Capital Gains Tax if the SIPP eventually sells the property.

Purchase of Own Shares - do some shareholders want to exit the company and need to take cash out? It might be that the older family members want to retire. One option might be to have the company purchase their shares. This not straightforward but, if HMRC agree to this being treated as a capital transaction, the "gain" is only subject to Capital Gains Tax and may qualify for Entrepreneurs Relief - this could mean paying tax on the gain at just 10%. If the other shareholders had to extract income that would be subject to tax in order to pay out the outgoing shareholders, the "tax loss" would be considerably higher.

Trading and Other Losses

Nobody wants to make a loss because it is just like seeing pound notes disappearing out of the door (unless you know something that the taxman does not know).

However, in difficult trading conditions any business can make a loss which they finance from cash and other reserves built up during better times. It is important to understand why the loss occurred and to act to bring the business back to profitability. Then you want to get some benefit from the loss either by turning that loss into cash or at least reduce your other taxes.

What can you do with a loss?

Trading Losses

You can carry these forward and set them off against future trading profits, set them off against other income that is taxable in the same or preceding year or set them against capital gains to reduce your CGT.

If you are a new unincorporated business, you can set them against other income of the previous 3 years even if you were not trading in those years, e.g. use them to reclaim PAYE.

If you cease trading and have made a loss in the final year, you may be able to use this loss against profits of the previous 3 years.

Remember that there can be restrictions for partnership losses where partners work only part time.

Property Businesses

The profits and losses from all the properties are pooled to arrive at a net figure each year. If there is an overall loss, that loss is carried forward and can only be used against the property profits of later years.

Furnished Holiday Lets

The advantageous treatment of these lets has been restricted. From 6 April 2011, losses can no longer be set off against other income but must be carried forward and used against Furnished Holiday Letting profits of later years.

Capital losses

In each year, the profits and losses from all disposals are pooled. If there is still an unrelieved loss, it is carried forward to use against future capital gains.

Business Finance - EIS and SEED EIS.

We have undertaken a number of EIS schemes for a range of companies. We anticipate a number of the new SEED EIS scheme which only runs from 2012/13 to 2016/17. The rules for SEED are very similar to the EIS. Broadly:

- Investments have to be made in eligible shares.
- Employees do not qualify.
- Investors should not have a substantial interest.
- Subsidiaries must be qualifying subsidiaries.
- The company must not be a member of a partnership.
- Gross assets immediately before the investment must not exceed £200,000.
- The number of employees must be under 25.
- The company must not previously have raised money under VCT or EIS.
- The maximum that can be raised by the new issue is £150,000.
- The funds must be actually spent within 3 years.
- The company must carry on a new qualifying trade.

Non Qualifying Trades - EIS and SEED

There is a list of non qualifying trades and these include Accountants and Lawyers. It also includes farming but cheese making is not farming even if you need to keep cows to provide the milk. The keeping of cows may be incidental to carrying on the main trade of cheese making.

Crops not grown in the land are not farming or market gardening. Therefore, the growing of pot plants and mushrooms are not included. Salmon farming may also not be farming but mussel farming probably will be.

Banking, insurance and other financial activities are also excluded but this should not exclude IFAs or brokers.

The receipt of royalties and licence fees is excluded but this does not include incidental receipts, e.g. theatre tickets, chauffer driven cars, etc.

Royalties and licence fees in relation to an intangible asset created by the company are also excluded so if you have developed the product or process and licence it for another company to exploit, you will still qualify.

So, what you have to do is to look very carefully at what the trade actually is and then decide if the elements that might, at first sight appear to be excluded, are merely incidental to the principal purpose of the trade.

Health Warning

The detailed rules for EIS and SEED EIS are complex and we have just tried to give a summary above. If you would like to explore the use of either of these schemes to raise equity finance for your business, come and speak to us.

Charities and Sponsorship

Did you realise that permitting a trader to use the charity's name or logo in return for a payment is trading and could be taxable income in the hands of the charity.

If you think this could affect you, you need to check it out.

Planning a Divorce?

Hopefully, none of you will need to read this but we put it in anyway... just in case.

If a couple own property jointly, the income will be taxed on them equally unless they submit Form 17 to change the tax treatment to agree with the underlying ownership. Following separation they are taxed on the income to which they are beneficially entitled.

A tax efficient way of making a settlement can be to make payments into a pension scheme for the other spouse. The tax relief obtained means that a much larger settlement can be achieved at a lower actual cost. This will depend on the circumstances of the individuals and payments will probably need to be spread over 3, 4 or 5 years because of the contribution cap.

Transfers between husband and wife for Inheritance Tax are exempt and there is no living together condition. Therefore, provided any transfers of assets are made before the divorce, there will be no problems. After that, you need to live 7 years or rely upon the lifetime exemption, currently £325,000 each.

If you made a will prior to separation, make sure that you update it. There are various consequences of a divorce on the old will but best speak to a lawyer about that.

No Capital Gains Tax is payable on husband and wife transfers in a year in which they are living together. This continues to apply throughout the tax year in which they separate. After that the transfer will be deemed to take place at market value because they are treated as connected persons until the divorce itself. The exact date of separation and divorce are therefore important. So, transfer assets before 5 April following the date of separation but, if you cannot, transfer assets that have little or no capital gain that could be subject to tax. Consider transferring the family home, personal assets (qualifying for the chattel exemption), assets valued at less than original cost of that qualify for entrepreneurs relief or business gifts relief.

Where a couple own more that one property, they could agree to take one or more each. Compensation may be paid where the values are not equal. Transfers after the date of separation will take place at market value. The gain on sale of part of one of the properties may be able to be rolled over into the cost of the addition part of the other property. A problem comes where the properties have different values as one of the parties will have realised cash from the sale that had not been reinvested and so CGT might actually be payable.

Where the principal asset owned by the couple is the family home and one has to occupy this because of the children, there are various tax efficient strategies that can be used but we do not have space here to go through this. Come and speak to us.

Charities and Naming Rights

Are you offering traders and others the opportunity for levels of exposure or promotion in direct proportion to their contribution to the charity - a price list of benefits? Are you offering to put the sponsors name on a room, display case, etc.

This is probably taxable income in the hands of the charity and you will need to re-organise how you go about this. You need to ensure the income is a genuine donation and then decide on benefits you may subsequently bestow in recognition.