

tlp - news

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The monthly newsletter of The Long Partnership and A A Mackenzie & Co.

www.thelongpartnership.co.uk

Get in touch!

We like to provide you with information and strategies on current business and tax issues.

However, in these few short paragraphs we can only give you a summary or outline - a brief guide.

Many of these are introductions to otherwise quite complex issues and, if you are in any doubt, you should contact us so that we can advise on your own particular circumstances.

Quotes

"Small opportunities are often the beginning of great enterprises."

-- Demosthenes, statesman

"Every man dies. Not every man lives. The only limits to the possibilities in your life tomorrow are the "buts" you use today."

-- Les Brown, Author and Motivational Speaker

"People of mediocre ability sometimes achieve outstanding success because they don't know when to quit. Most men succeed because they are determined to."

-- George Allen, football coach

"Don't be afraid to take a big step if needed. You can't cross a chasm in two small jumps."

-- Anonymous

Spring is in the air and that means conference season. As always we keep the newsletter back so that we can include information relating to the hot topics from the 2013 Spring Tax Conference of the Chartered Institute of Taxation. We can only give you an outline of what was on the agenda and there is no room to get too technical but give us a call if there is anything that you think will adversely impact on you or your business.

There are some important issues and radical changes and that is why it is so important that we keep up to date so that we can advise you and keep you up to date as well.

For directors and companies there are some important changes that could potentially cost you money and so we will be looking at the impact of these changes on you over the next few weeks and months. We have outlined the changes on the following pages.

We would always want to keep up to date anyway but we also have an obligation to undertake a certain level of training because we are qualified and therefore regulated. Being regulated can sometimes be a real pain. We have to carry PII (Professional Indemnity Insurance) at a prescribed level, undertake continuous training, make Annual Returns to our professional bodies and our systems and files are subject to periodic inspection by experienced personnel from the QAD (Quality Assurance Directorate) and others. We have another QAD visit coming up shortly.

However much of a pain this can be, it does give our clients and prospective clients the assurance that we are doing our job correctly and professionally. **It is what marks us out from unqualified and unregulated accountants.** But people have to make up their own minds. The lowest priced accountants will generally be unqualified and unregulated. If you want the comfort that comes from using qualified advisers, this inevitably comes at a price. However, the trade-off is likely to come when it comes to such things as paying tax.

What you could save in professional fees, you could pay many times over in higher taxes and, these days, much higher penalties, and not even realise that you could have done something about it. If we are responsible for looking after your tax affairs, then we take that role very seriously.

Many years ago we said on our website that what we do is "stress relief". We give you the comfort of knowing that we have brought our knowledge and experience to bear in looking at your own circumstances just look at what information we give away in our newsletters for free. It is our shop window. There is a lot more inside the shop.

One of the issues that we hear regularly at these conferences, is the question of regulation of unqualified accountants. It appears that HMRC see them as being a risk area and that there is more of a chance of them getting something wrong. Given that HMRC use risk based analysis to determine who to investigate, you would expect clients of unqualified and unregulated accountants to be at higher risk of enquiry. I do not know if that happens in practice.

Some time ago there was a proposal that HMRC itself would be the regulator and presumably this would involve some sort of random file inspections. No doubt this will all be made clear over the coming months and years.

Anyway, back to the conference. One of the issues of concern was the amount of proposed legislation that would be introduced in either 1 or 2 years. It makes the budget sound as though it is full of measures to help the economy, or you and me as taxpayers, but so much of it will not come into effect for at least a year, which means they have that time to change their minds. We hear, we plan, we advise, then it might never happen at all. Does not give you a lot of confidence in the tax law makers, does it?

Later this year will be at the Annual Conference of the Scottish Branch of The CIOT. This is now a 2 day conference, partly because of everything that is going on in Scottish Tax just now. There seems to be a lot developing in Scotland both taxwise and businesswise and so it is an interesting time to be an accountant here, but not half as interesting as it could get after the referendum next year!

General Anti-Abuse Rule - The GAAR!

The GAAR is the new General Anti-Abuse Rule which will take effect from Royal Assent, which is expected to be July 2013.

While these new regulations are aimed at more extreme tax mitigation schemes, it is likely to have an impact on the way that HMRC approach tax planning strategies generally. How much? We will have to wait and see.

In the view of HMRC, arrangements are abusive if they are arrangements which cannot reasonably be regarded as a reasonable course of action. This is known as the “double reasonableness” test.

How can you tell if the arrangements fail the double reasonableness test? HMRC say:

1. Are the results of the arrangements consistent with the principles and policy objectives of the tax legislation. i.e. do the arrangements interpret and use the legislation in the way intended by Parliament?
2. Have contrived or abnormal steps been included?
3. Do the arrangements exploit unintentional shortcomings in the law?

So, if the amount of tax payable is inconsistent with the underlying economic value of the overall transaction, HMRC may take the view that you have obtained an unfair tax advantage and take action to counter the effects of the “abusive” arrangements.

Therefore, HMRC can step in if, looking at the transaction as a whole, they think that by some cunning and artificial plan, you have paid too little tax.

This is unlikely to affect most people but at this stage you are probably thinking that it is good that **we provide free fee protection for ALL our clients ...** just in case.

So (most of) you can sleep easy, safe in the knowledge that HMRC will leave you alone but if not, we will be there.

If you can't sleep, call us!

Dissolving A Company

There are 2 methods of dissolving a company:

1. Formally by appointing a liquidator.
2. Informally through the striking off procedure.

Appointing a liquidator can be expensive and so most dissolutions take place under the informal procedure. Under both routes, payments are generally treated as capital and subject to CGT but there are exceptions.

Formal liquidations:

When either trading ceases or a liquidator is appointed it will bring about the end of an accounting period for Corporation Tax purposes. This is important because it changes the filing deadlines for accounts and Corporation Tax returns and can affect the subsequent rate of tax applied. Generally you want the liquidator appointed before trading ceases.

Informal striking off:

There have been a **number of changes over the last couple of years.**

This is a very **simple procedure** but a **precondition** is that all debts have been collected as far as possible and all creditors have been paid. The proposed strike off will be advertised in the Edinburgh Gazette and any creditors that have not been paid can object to the striking off and, HMRC will always object where there are outstanding returns unless the striking off has been agreed with them in advance.

Where the company intends to make an application to the registrar of companies to have the company struck off, it will be able to make payments in respect of share capital and reserves (i.e. your balance sheet total) in anticipation of its dissolution, provided that this does not exceed £25,000 and these will be treated as capital and subject to CGT. If they exceed this amount, all the payments to the shareholders will be treated as dividends.

However, **if your balance sheet total exceeds £25,000**, then before you start to consider dissolution, you may be able to pay out enough dividends from the reserves to bring you below the £25,000 threshold. These dividends will be subject to Income Tax but it will mean that you can get capital treatment on the last £25,000.

If the final distribution exceeds the amount the shareholders paid for the shares, they will be subject to CGT (after their annual allowance) on the excess, at 18% or 28% or 10% if entrepreneurs' relief applies.

Entrepreneurs' relief continues to be available to each shareholder after dissolution commences provided the following conditions are met throughout the year up to the receipt of distribution or cessation trade:

1. The company has been a trading company.
2. The shareholder owns at least 5% of the voting rights and ordinary share capital.
3. Shareholder is an officer or employee of the company

To qualify, distributions must be made within 3 years of trade ceasing.

Money owing by directors to the company:

Any money owing by the directors to the company which has not been repaid will result in a tax liability falling on the director in respect of the loan balance written off.

Disincorporation relief – NEW but only for the next 5 years:

This is a new relief from April 2013 and is available where a company transfers its business to some or all of its shareholders.

There are a number of conditions as follows:

1. The business is transferred as a going concern.
2. The business is transferred together with all the assets including goodwill.
3. Total market value of all the qualifying assets does not exceed £100,000.
4. All the shareholders to whom the business is transferred are individuals.
5. Shares in the company were held throughout the 12 months prior to the transfer.

The claim must be made within 2 years and signed by all the shareholders.

The assets are transferred at the lower of cost and market value. This will result in certain tax charges, which in the case of stock and equipment can be mitigated but there will frequently be an issue relating to the goodwill which can sometimes have a significant value. You need to speak to us.

Extracting profit from small companies - Big Changes!

A frequent problem that we see is that money is withdrawn from small companies without assigning an appropriate description, whether a salary, a dividend, a loan, an expense payment, or just a payment from the director's loan account held within the company. Especially with the introduction of RTI, this is becoming a real issue.

With each type of payment, there are issues to do with recognition to tax purposes.

Remuneration:

Remuneration is paid when it is either actually paid, a payment on account is made (where the employer has a right to recovery, like a loan) or, if earlier, the date on which the person becomes entitled to the payment.

An actual payment can be in cash, cheque (when it is given to the employee), a transfer to an account in the company's books from which the individual is free to draw, or a payment made to a 3rd party on the instructions of the employee.

In addition there are some additional rules for directors as follows:

1. When earnings are credited to an account in the employer's books, even if the director is not free to draw on the cash.
2. When the value of a payment has been determined even if not yet paid. For example, if directors fees are voted at an AGM or bonuses determined under a service contract based on profits or turnover.

Dividends - Interim dividends:

There is no right to an interim dividend until it is paid and so this is when it is taxable. An interim dividend is paid when:

1. Actually physically paid, or
2. Credited to the directors loan account (the date of the payment is the date when it is actually credited. i.e. the day on which the relevant accounting entries are made in the books of the company). Therefore, you cannot deem the dividend to be paid at an earlier date than the amount is actually written into the books.

Final dividends:

A final dividend is due when the dividend is declared in a General Meeting unless otherwise specified in the resolution.

Weekly or monthly dividends:

We have come across many examples of directors drawing out weekly or monthly "dividends" as a remuneration substitute, but in reality all they are doing is withdrawing money from the company. If this is truly payment for the director's services, the whole amount is probably liable to PAYE and you have stored up arrears of National Insurance (employers and employees) and are just waiting for HMRC to find you!

Loans to directors

It is not unusual for the directors of small companies to find that they have extracted more cash than was actually available to them and now owe money back to the company.

Until now, where a director owed the company money at the year end, the company made a payment to HMRC equivalent to 25% of the outstanding balance. However, no payment is necessary provided that the directors account is repaid within 9 months of the year end and this could be achieved by declaring a dividend within 9 months of the year end.

HMRC have changed the rules! Dividends after the year end now have to be matched with certain money drawn after the year end and only any excess carried back to offset against the year end balance. **This will inevitably lead to more payments to HMRC.**

The definition of a **loan to a director has also been extended** to include a partnership which includes a director, and the 25% charge will also now apply to this loan.

As if these changes were not enough there is a **further extension to these rules**. Where a small company is at any time party to tax avoidance arrangements which result in a benefit, generally money, being made available to one of its directors or shareholders without the payments of appropriate amounts of tax, the 25% charge is payable **by the company**. This can arise in hybrid structures such a partnerships between a company and its own director.

Simplified taxation for small businesses

This scheme for businesses with a turnover below £77,000 will only benefit the smallest and simplest businesses with low capital costs and minimal borrowing.

You can opt in from 5 April 2013. However, you cannot easily opt out of the scheme and you are therefore tied to the scheme for the foreseeable future.

Trading losses may only be carried forward so that, if you have other sources of income against which you could offset trading losses, this will not be available to you.

In the early years of business, there is more likelihood of losses available for relief, either through start up costs or capital allowances claimed on new equipment. Losses in the first few years of trading can be offset against previous earnings under PAYE but not under this scheme.

If you have significant borrowings you can only claim £500 against your profits.

There are no Capital Allowances available and no deductions for the capital cost of cars, motorcycles and also for the purchase or improvement of assets that are likely to hold their value. Otherwise, any assets purchased for the business will be deducted from profit with an effective initial allowance of 100%. This is no different than you can get normally.

Our verdict - this scheme will only be advantageous for small, low capital, low borrowing businesses.

Reduction in allowable pension contributions

The annual allowance for contributions to pension schemes has reduced to £40,000 and the lifetime limit to £1.25 million.

For money purchase schemes this is easy to monitor but not if you are in a final salary scheme.

You have to take into account not only your additional entitlement from an additional years service, but also the potential increase in the tax-free lump sum based on your current salary.

Give us a call if you are concerned.

The Peedie Bits.....

Non-domiciled spouses and civil partners

Transfers between UK domiciled spouses and civil partners are fully exempt from Inheritance Tax, but where one partner is non-UK domiciled, exemption is limited.

The lifetime limit for exempt transfers to non-UK domiciled spouses or civil partners is to be raised from £55,000 to £325,000 with effect from 6 April, 2013.

Limiting IHT deductions for liabilities

There will no longer be a deduction against a persons estate for any liabilities which incurred to acquire property on which relief such as BPR and APR was due.

In future, the liability must be deducted from the value of the asset qualifying for the relief which means that no tax will be saved as the asset is already relieved.

So, for example, if you have purchased business property but secured the debt on your own home, previously this would have reduced the value of your home and your estate for IHT purposes but, in future, this will no longer be the case.

Scottish tax to fund English benefits

The Chancellor has confirmed the government's intention to implement proposals funding the cost of care of the elderly in England.

It is being funded by freezing the nil rate band for IHT throughout the UK but this will be most keenly felt in Scotland.

Cap On income tax reliefs

From 6 April 2013 a cap will operate on a number of reliefs that are presently set off against income. The most important of these are trade and property loss reliefs and qualifying loan interest relief.

It will still be possible to carry forward unlimited losses against future trading profits, and there are exceptions for losses attributable to overlap relief and business premises renovation allowances. Following a storm of protest, the cap will not apply to charitable gift deductions.

The cap is the greater of £50,000 or 25% of adjusted income so it will have limited impact on most small businesses.

Statutory Residence test - from 6 April 2013

A statutory test to determine UK resident status is now in operation for 2013/14 onwards. The test will contain 3 parts comprising automatic overseas tests, automatic UK tests and a sufficient ties test combining time spent in the UK and the person's ties to the UK.

While the tests are not straightforward, they will give more certainty than the previous rules and we anticipate that they will be a considerable benefit to our clients.

Tax free childcare scheme

A tax free childcare scheme is to be phased in from autumn 2015 and it will be worth up to £1,200 per year for each child i.e. basic rate relief on childcare costs up to £6,000 per year.

It will be available to families where all parents are working and not receiving tax credits or universal credit, so **we think this will be of limited use.**

Current employer supported childcare arrangements will be phased out for new applications from autumn 2015.

New employment allowance

The regional employers NIC holiday had a miserable take up with only 14,000 of the anticipated 400,000 businesses taking advantage of the NIC holiday up to April 2012.

The new relief is being introduced from April 2014 that will be claimed through RTI and it will be delivered automatically to all small businesses. While not as generous as the previous provisions, it will be more widely available.

All employers will therefore benefit but it will have the greatest impact on small employers.

The new allowance will be £2000 per year and will be made available to **all businesses and charities** to be offset against their employer class I secondary NICs bill from April 2014.

This is intended to be an incentive to job creation.

Low rate loan exemption doubled to £10,000

When an employer provides an employee with an interest-free or low-interest loan, this can give rise to a benefit in kind relating to the subsidised rate of interest.

From 5 April 2014 you will be able to make a subsidised rate loan available up to £10,000 (currently £5,000) without having to make an entry of a P11D for the benefit.

If the loan is to a director than there may still potentially be a payment to HMRC by the company of 25% of the balance but there will be no P11D implications and nothing to be entered on the directors tax return.

Employee shareholder status

A new "employee shareholder" is being proposed, although this has had a slightly stormy progress through Parliament and the ultimate form of the employee shareholder is not yet properly known.

Broadly, however, the employing company will issue fully paid shares worth at least £2,000. In consideration, the employee enters into an agreement which restricts their rights to undertake study or training, to request flexible working arrangements, or to receive redundancy payments and it also limits protection against unfair dismissal.

It is likely that there will be some tax relief on the issue of the shares to restrict any income tax payable by the employee on the allocation of shares and also for Capital Gains Tax on any subsequent realisation.

One interesting planning point that has come up in discussion is the potential to issue shares to members of staff that you want to get rid of and then make them redundant. No doubt there will be some further legislation to avoid anyone taking advantage of this idea.

Employee ownership

There is a proposal to introduce a new relief from Capital Gains Tax on the sale of a controlling interest of a business, into an employee ownership structure. This is still just a proposal and there is nothing definite in place. The matter will be subject to consultation and it is hoped to introduce something in the Finance Bill 2014.

Family pension plans

From 6 April, 2013 a payment by an employer to the registered pension scheme of an employee's spouse, etc. will be subject to Income Tax and National Insurance Contribution liabilities on the employee and employer, respectively.