

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

"Nurture your mind with great thoughts for you will never go any higher than you think."

-- Benjamin Disraeli,
1st Earl of
Beaconsfield

"You can't talk yourself out of a problem you behaved yourself into."

-- Stephen Covey,
Author and Speaker

"Some men have thousands of reasons why they cannot do what they want to, when all they need is one reason why they can."

-- Willis R. Whitney

"Dig the well before you are thirsty."

-- Chinese Proverb

International commerce is a wonderful thing. Goods and services are moved all around the world and the beneficiaries are you and me. So much of what we use every day is now made in China or somewhere similar. I cannot say that I mind, given that it means I can buy what I want relatively cheaply.

Ford has just announced the end of its car production in the UK but it still manufactures in the EU. Does this matter? Probably not given that we drive a Ford at home and the company pool car is a nifty 1.8L diesel Focus often to be seen pounding the A9 and A96. You'll recognise the tail lights!

Modern technology also means that professional services are also being beamed around the world. Fast scanners and video conferencing mean that distance is no object.

What would you say if we said that all our accounting work was done by staff located in India for example? Just to be clear, it is not.

Nevertheless, we are constantly being bombarded with offers from companies operating in India wanting us to contract out the preparation of accounts and tax returns using cheap foreign labour.

There are a number of UK firms of accountants who subcontract their accounting and tax work to these companies in India. If a firm of accountants is charging significantly below the market norm, ask where the work is performed. The records might be being beamed to an office in India, with all the confidentiality controls you would hope would be in place.

Now, I hear you saying that this would not happen in our neck of the woods. Here is an extract from the latest email we received.

"We have also been chosen as the preferred vendors for the Tax Assist group recently." - QX

So, who else is farming work out to India for Indian accountants to complete? In contrast, **we prepare all our own work in Scottish offices.**

We train Scottish accountants (we have trainees in every office) for recognised accountancy qualifications to enhance the service we provide locally to all of our clients. **Scottish accountants supporting hard working Scottish business!**

Anyone who reads these outpourings regularly will not be surprised if I comment on the **lack of business sense of the sender of that email.**

They have disclosed the fact that TaxAssist uses Indian accountants. What a disclosure! We have wondered for a while how they operated. QX have answered our question. Don't think TaxAssist would have disclosed that to us. Now, **if they lack the common wit to realise that this should be confidential information, what else do they not understand about confidentiality and how we do business in Scotland.**

Anyway, on another note, Kirkwall is arguably our most productive office. **5 babies in 3 years.** Not bad eh! But seriously, nothing to do with us. It has meant a few staff changes in Kirkwall recently. Sandra is coming to the end of her second maternity leave and we hope to see her back again shortly. Mairi chose to join the family Jewellery business after her maternity leave. Then there was Nicola. Now there is Jacqui who has just left to start her maternity leave.

So, we now have some new faces in Kirkwall, both escapees from other accountants. **Nikki Gray** was a tax manager at **KPMG** in Edinburgh. Originally from Stromness, she married into the Gray dynasty in Stromness, where most of the family seem to be accountants. She seems to be settling in well and starting to get to grips with all our little foibles. She and Robert and their new daughter have just returned to Orkney.

We have also been joined by **Isabel Alexander** (nee Garson) who has "crossed the street" after 25 years with the rivals over the road. Originally from Stenness and Rendall, she now lives in Deerness with James and their two children. She brings with her a wealth of experience.

Finally, our best wishes go out to Jacqui from our Kirkwall office and her husband Tony. Tony has just been involved in a serious motorcycle accident and is in hospital in Glasgow.

Too Many “No Sales”

A general store had two tills from which the till readings formed the basis of the quarterly VAT returns. Approximately a third of the till transactions were “no sales”.

HMRC considered this excessive and took the view that sales and therefore VAT were being understated.

The taxpayer said that the no sales arose from paying lottery winnings, correcting errors, storing documents and paying staff wages.

There were actually about 700 no sales every trading day.

The taxpayer had also suggested that giving change was a service to his local community and that by not giving change when requested he might be subjected to violence.

There appears to have been a certain amount of disbelief and the taxpayer lost and not surprisingly in our view.

There was no proof that the neighbourhood was unsafe and the level of no sales was high by any standards. The fact that the taxpayers accounting records were unreliable did not add to his credibility.

However, this case does illustrate how HMRC use various techniques looking at non financial information (number of no sales, time the till summaries are extracted, etc) to assess the credibility of the financial information supplied, i.e. turnover and output tax.

Don't be surprised to find tax inspectors checking the date and times on your till slips. They do not like pub tills totalled at 9PM!

It is also common for HMRC to check that the turnover in your accounts reconciles to the total outputs on your VAT return. It should!

And at the end of the day they will also be checking businesses that are not registered for VAT, to check that the sales figure disclosed on your Tax Return is under the VAT threshold.

They just don't play fair, do they?

Companies as Partners

This is becoming more common but is this trend about to be reversed?

The partners are usually also the owners of the company. The profits available to the partners are therefore just shared out to the same people at the end of the day but some is channelled through the company. There is usually a tax saving motive.

However, there can be other benefits. For example, where the partners might be liable to higher rates of tax and the partnership has volatile profit levels, profits could be channelled to the company in good years and the company then pay out dividends in poor years when the partners' taxable income from the partnership is lower. This achieves the same benefit as the “averaging” profits which is presently available to farmers.

Many sole traders and partnerships introduce a company partner to improve their working capital position. Profits allocated to the company suffer lower rates of tax, leaving more funds still available to the business as a whole for working capital. However, one issue for such partnerships is that they will not be entitled to an Annual Investment Allowance so there is a downside to this structure if the business has significant capital requirements.

It is therefore not uncommon for the company to have a large capital account balance in the partnership accounts while the “live partners” are heavily overdrawn. There can be tax consequences to some of these arrangements particularly with the changes announced in this years budget. Speak to us if you think you might be in this position.

In the past the liquidation of the company would result in a distribution to the directors who will use this to repay their loan accounts in the partnership. However, you need to watch for unintended tax consequences along the way. Planning is essential.

The trend may well now move towards businesses just becoming companies, just plain and simple.

An interesting case – hinges on the meaning of business

A taxpayer had a property which was divided into flats. They wanted to sell some of the flats but were facing significant Capital Gains Tax liabilities. They therefore transferred the property to a company in return for shares, allowing the company to sell the flats with no immediate CGT liability. Could this be useful!

The law says that a “business” asset can be transferred to a company in return for shares and the Capital Gain is rolled into the cost of the shares. The asset is treated as acquired by the company at market value and so when sold, the gain will be minimal. In this case the flats were acquired by the company at market value. The company could then sell them at market value with no gain. The gain is left behind, rolled into the price of the shares which were not being sold.

After an earlier decision, it was thought that this had not worked but this time, in a higher court, the taxpayer won but it all hinged upon whether the taxpayer was carrying on a business, which is different from whether they were trading. Trust me, there is a difference.

There was no statutory definition of the word “business”. This case has laid down some basic tests of whether a business is being conducted. Remember that all trades are businesses but not all businesses are trades.

The questions now to be considered are:

- (i) Do the activities represent an occupation or function pursued with reasonable or recognisable continuity?
- (ii) Do the activities have ‘a certain amount of substance’ in terms of turnover?
- (iii) Are the activities conducted in a regular manner and on sound and recognised business principles?
- (iv) Are the activities of a kind commonly made by those who seek to profit from them?

So, are you brave enough to try this yourself? It could potentially save a large amount of tax. But, be warned, HMRC may decide to object. If you fancy a punt then that is fine, but it is probably too early to be able to say that this will actually work every time. Come and speak to us if you are thinking of using this strategy.

Creative Industry Tax Reliefs

This is a bit specialised and quite complex but we know there are some people who may be interested, so try and keep up!

These reliefs allow qualifying companies to claim a larger deduction, or in some circumstances claim a payable tax credit when calculating their taxable profits. They work by increasing the amount of allowable expenditure. Where there is a loss, you may be able to 'surrender' the loss into a payable tax credit.

Your company must be liable to Corporation Tax and be directly involved in the production and development of certain films, 'high-end' television programmes, animation programmes or video games

Special tax rules apply to all film production companies producing films (whether or not the films are intended for cinema release). Companies can choose to opt out of these rules but will then not be eligible for Creative's Tax Relief.

Must pass a 'cultural test'

Certification and qualification is administered by the British Film Institute (BFI) on behalf of the Department for Culture Media and Sport. The BFI will issue an interim certificate for uncompleted work or a final certificate where production has finished.

Film Tax Relief will be available if:

- the film passes the culture test - it is considered a 'British film'
- the film is intended for theatrical release
- at least 25% of the total production costs relate to activities in the UK
- the first day of principal photography took place on or after 1 January 2007

Animation Tax Relief will be available if:

- the programme passes the cultural test - a similar test to that for Film Tax Relief but within the European Economic Area
- the programme is intended for broadcast
- at least 51% of the total core expenditure is on animation
- at least 25% of the total production costs relate to activities in the UK

But not if the production:

- is an advertisement or promotional programme
- is a news, current affairs or discussion programme
- is a quiz or game show, panel show, variety show, or similar programme
- consists of or includes an element of competition or contest
- broadcasts live events, including theatrical and artistic performance
- is produced for training purposes

Calculating the enhanced deduction or payable tax credit

The calculations are horrendous, so if you think you might qualify, get in touch and we will see if we can explain it in the context of your own business and circumstances. Otherwise we will be writing a book here.

How and when to claim Creative Industry Tax Reliefs

You can claim for relief in your Company Tax Return once your company has received its certificate from the BFI. If you have received an interim certificate you must apply for a final certificate after the film, television programme or video game has been completed. If you don't, you will have to repay any interim relief already paid. Certificates should be sent with the return.

Baker Tilly May Bid to Buy Troubled RSM Tenon

The share price of the troubled accountants RSM Tenon continues to fall. Baker Tilly, a mid tier accountant is considering making a bid for the Tenon shares but at a significant discount. The offer would be solely in cash so that there would be no shares in Baker Tilly in return. This suggests that they do not want any of the existing Tenon shareholders on board. The latest announcement from Baker Tilly resulted in a drop in the Tenon share price by 34% to 2.25p. Any deal would also need the agreement of Lloyds Banking Group, the firm's sole lender, because of RSM Tenon's high debt levels.

HMRC Taskforces - Yet More Activity.

HMRC have announced the launch of four more specialist taskforce initiatives around the country with the aim of recovering a total of £16m in unpaid tax.

The taskforces will target the haulage industry in the Midlands, and the restaurant trade in Yorkshire and Humber. **A third taskforce will cover all areas of the Scottish fishing industry, including tax evasion by crews, fishing vessel owners and fish processors.** As part of this initiative, HMRC say they will be working closely with Police Scotland, Immigration Enforcement, Border Force and the Gangmasters Licensing Authority in a multi-agency approach to identify occurrences of migrant labour abuse either through fraudulent access to benefits and public services or by exploitative employers.

HMRC have collected more than £80m as a result of taskforces launched since 2011-12 and say they expect to bring in over £90m per year from taskforces over the next three years.

HMRC Gives Self-assessment Avoiders Settlement Window

HMRC have launched a campaign 'My Tax Return Catch Up' for individual taxpayers to settle any outstanding tax bills if they failed to complete their tax returns under the self-assessment requirements for 2011-12.

From 9 July, recalcitrant taxpayers who failed to complete a self-assessment tax return for any year up to 2011-12 have a window of opportunity to tidy up their tax affairs.

HMRC will be using its intelligence gathering software "Connect" to target suspects and will write to them shortly. Check your post!

Taxpayers can also tell HMRC that they want to join the campaign.

Taxpayers will have until 15 October 2013 to complete and submit a tax return, and pay the tax and National Insurance contributions (NICs) that they owe. After that, penalties up to 100% of the tax will be charged.

The peedie bits ...

Interest relief - Loans to Partnerships

Have you taken out a private loan to either introduce capital in to a partnership or as a loan to the partnership? Where an individual takes out a loan to purchase a share in a partnership or to make a loan to a partnership, you can get tax relief for the interest paid.

The relief is given as a deduction against net income. Any relief will now be capped at the greater of £50,000 or 25% of the your adjusted total income for a tax year but that should be enough for most of us.

The borrowing must be wholly and exclusively for the purposes of the trade. So, if your business needed more working capital and you took out a personal loan, you should get tax relief. If you haven't, then you need to get in touch.

Property Rental Business

Where a partnership has a number of rental properties they are all treated as part of the same rental business and profits and losses netted off. The only distinction will be between a UK property business and an overseas property business. So, if a partnership owns a number of properties, the results are shown net for tax purposes. However, where some properties are also owned by an individual, this is a separate property business and this is kept completely separate from the partnership property business.

Therefore, if you want to be able to net off the results, make sure the ownership is identical. If you don't then use sole and partnership ownership, and also differently constituted partnerships.

Partners' Expenses

Where a partner incurs expenses outside the partnership these must be included in the partnership tax return if the partner wishes to obtain tax relief. The most common expenses where attempts are made to obtain relief outside the return are "motoring expenses" and "use of home as office". Where the partners agree that they will bear certain expenses out of their own profit share those expenses will therefore still need to be included in the partnership return.

Partnerships / LLPs and Entrepreneurs' Relief (ER)

Partners can qualify for Entrepreneurs Relief in respect of transactions by the partnership including:

- The disposal of the whole or part of their interest in the partnership
- A disposal by the partnership of the whole or part of the partnership business
- A disposal of partnership assets following the cessation of the partnership business

There is still a need for the partner/member of the LLP to have held the business interest and assets for at least 12 months prior to disposal or throughout the 12 months prior to the cessation of the business followed by a disposal within three years. However, unlike the ownership of shares in a company, there is no minimum requirement to hold a stake of at least 5%, so any fractional share held in a partnership or LLP may qualify for relief.

IHT - Business Property Relief: Partnership Assets

Care is needed in respect to the ownership of assets used by a trading partnership. Business property relief is available to those partners who have been a partner for at least two years, but the rate of relief depends on whether the asset is held in the partnership.

Assets held within the partnership will attract 100% business property relief as they will fall to be part of each partner's interest in the partnership. In contrast the relief is only 50% for those assets held by a partner outside the partnership. Therefore, where possible, such assets should be held within the partnership.

Another issue relates to unquoted companies owned by the partnership such as a service company. A partnership is not transparent for inheritance tax purposes and so the 100% relief for shares in unquoted trading companies does not apply to these shares. HMRC are likely to contend that the shares are an investment and so an excepted asset of the partnership for the purpose of BPR and not attract relief.

Therefore, in contrast to other assets, it would be advisable for the shares in these sort of companies to be held outside the partnership where the 100% relief available to individuals for shares in unquoted trading companies can apply.

It is therefore important that assets are held in the correct place to maximise the relief. It helps considerably if the way in which property is owned, is properly documented in the partnership agreement and other legal documents.

Employment Allowance

The final announcement made by the Chancellor in Budget 2013 was the introduction of the employment allowance, which Mr Osborne described as 'the largest tax cut in the Budget'. Interestingly, in making this announcement Mr Osborne referred to National Insurance only twice, whereas he referred to tax seven times, indicating that it is now accepted, at least by the Government, that NICs are simply another tax.

The proposed employment allowance means that, from April 2014 all businesses and charities will be entitled to a maximum of £2,000 annual allowance to offset against their Class 1 secondary NIC bill.

Using Offshore Intermediaries to Avoid NIC

HMRC are strengthening legislation to prevent the use of offshore employment payroll companies (intermediaries) to avoid employer NICs'. The changes are likely to be introduced from 6 April 2014.

HMRC are seeing increasing numbers of businesses using offshore employers to employ UK workers to avoid paying employment taxes and NIC and NIC is a big contributor to the Exchequer. This is a consultation process for the time being but expect legislation to be effective from next year.

The present proposal is to extend the present UK income tax and NIC charges on offshore intermediaries employing workers in the UK, with unpaid charges becoming the responsibility of onshore intermediary or the engager of the labour i.e. the 'end client'.