

tlp - news

February 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

"Wealth depends chiefly on two words, industry and frugality; that is, waste neither time nor money, but make the best use of both."

-- Benjamin Franklin, statesman

"Hope works in these ways: it looks for the good in people instead of harping on the worst; it discovers what can be done instead of grumbling about what cannot; it regards problems, large or small, as opportunities; it pushes ahead when it would be easy to quit; it 'lights the candle' instead of 'cursing the darkness.'"

-- Anonymous

"The only safe thing is to take a chance."

Mike Nichols, director

Happy New Year! No, I do not mean the Chinese New Year, although I do wish all our many Chinese clients a happy one. I mean the Accountants' New Year which normally begins on 1 February but this year was postponed for two days. Did you see accountants celebrating in the streets, shouting and whooping for joy with such delight at having filed their last 2011 Tax Returns before the "31 January" deadline? Was the air electric with their enthusiasm for life and the determination to enjoy themselves at the start of another exciting year?

Probably not. They probably went home put on the kettle and went to bed, so they could start again next day, nose to the grindstone, another day in another year. You have to feel sorry for them, but at least it stops them wandering the streets counting the cracks in the pavement or worse. I jest.

You can rest in the knowledge that we, being a little different in the way we do things, went home, opened a bottle of wine and saw in the New Year appropriately, although you would not have seen us singing in the streets after one too many. Maybe next year.

Anyway, that is January 2012 out of the way. Spring is round the corner. A time for the new shoots of business to appear. A time for new ideas to be explored and evaluated, new chances to be taken and new risks absorbed. Risk! Surely not! You don't take risks in business, or do you? I do not believe you can ever set up a business without risk. If it was safe and obvious, everyone else would have done it before you. New chances are new opportunities. When a chance comes your way, you must grab it before it travels past you to the next person in line. You can reduce the risks by "due diligence" but time is often not on your side and you have to jump in and trust your own instincts. By the way, don't ask your bank manager if it is a good idea, they'll tell you all the problems you are going to face, one of them being they cannot help you get started. Lawyers will tell you all the

legal pitfalls and your family will tell you the rest. So, steering clear of negative messages, what opportunities are you going to find this year? They are out there if you only just look and are prepared to grab them. Who can you speak to about business opportunities? Now, at this stage, I am sure you expect me to say "your accountant", but I am not. You need to speak to someone who has been successful in business, has lived through and has experience of what you are about to do. You need a mentor and one with a track record. If they have merely run the same stable business for years, they are likely to be risk averse and may not fully understand your motives. Find someone who you trust and who has grown their own business, taken their own risks and survived with a much bigger business than they started. These people are more likely to know the score. If someone wants to give you advice about how to run your business, ask them how successful they were in running their own business. Many have never done it, and couldn't. They can only pass on text book answers and business requires more imaginative solutions.

Now, there are accountants, lawyers and others who fit this description. You can talk to them. Otherwise look for people running successful and profitable businesses.

By the way, I do think we qualify to mentor new and growing businesses. I think we tick the boxes, but then I would, wouldn't I. But, we have set up, run, and grown our business just the way you want to grow yours and so can pass on that wisdom (and show you the bruises).

Remember, you should not be re-inventing the wheel. You do not need to make all the mistakes everyone else has made before you. There will be plenty of those whatever you do, so learn from the mistakes of others, from those who have already made them and are happy to share their experiences with you.

However, you also have to be prepared to be open to absorbing the wisdom of others. You cannot know everything, so be prepared to listen and learn. Be observant of other businesses to see if you can learn from them. There is always room to learn a little more, and make a little more profit.

No More Business Record Checks - for the Moment

HMRC's programme of Business Record Checks (BRC) is going back to the drawing board.

The decision follows a review prompted by feedback from professional and business bodies who argued that the tax department's "helping hand" approach to paperwork was more of a hindrance.

The results of the review published on Friday 3 February, showed that of 2,437 business records checks carried out up to 4 January 2012, 28% of businesses received an "amber" rating showing the existence of some issue with their record keeping, and another 11% were rated as "red", bad enough to require a follow-up visit.

The scheme has had a fraught gestation period, with concerns about the visits turning into fishing trips for tax investigations.

Following the latest review, all new appointments will be put on hold until a new process is devised and put in place after the turn of the financial year in April.

The internal review recommended turning the checks into more tightly targeted interventions, set within an educational framework. HMRC are still to define what constitutes "adequate" records and the point at which companies should be subjected to a follow-up visit to ensure improvements are made.

But the sting in the tail is likely to remain with the potential for a full tax investigation where inadequate record keeping persists of even penalties. It is possible that if a business is referred for a full audit and it is found that tax returns submitted before, or after, the referral were inaccurate and that inaccuracy was a result of inadequate record keeping then a record-keeping penalty should be charged in addition to any other penalty due.

Let's see what BRC V2 brings.

Source: Accountingweb

Entrepreneurs relief - sale of whole or part of a business

ER is not available when the disposal is of an asset used in the business as opposed to the disposal of part of the business itself. We are seeing HMRC take a strong line on this especially where a business has ceased and "assets" are being dispersed.

Farms are a particular source of published cases because it is not unusual for some of the farm land to be sold for development, from single house sites to larger projects.

According to Gerry Hart, a well known tax writer, HMRC's practice seems to be to not challenge relief if the farmer disposed of over 50% of the farmland, as that would have a significant impact on his subsequent activities so that a part disposal of the business had taken place. Smaller percentages should be arguable though.

Here are some cases that illustrate the position.

McGregor v Adcock - ER denied

Mr Adcock sold 4.8 acres of farmland out of a total holding of 35 acres, with the sale being with planning permission for development. He carried on the same business after the disposal as before, and it was held that he had simply made a disposal of a business asset, not part of the business.

Atkinson v Dancer - ER denied

Sale of 9 acres of land out of 89 acres used in the farming business. He ceased egg production on the farm and a few months later sold the 9 acres but none of the 9 acres was used in the egg production activity.

Mannion v Johnson - ER denied

Sale of 17 acres out of 78 held as a farmer. A few months later another 18 acres were sold. The separate disposals were held not to form part of a single transaction.

Pepper v Daffurn - ER denied

Sale of 83 acres out of 113 acres farmed. In the particular circumstances, all the farmer had done was to change his activities from rearing beef cattle and sheep to that of cattle grazing. He had merely sold assets surplus to the requirements of the new activities.

Jarmin v Rawlings - ER allowed

64 acres of farmland owned, with a milking parlour and yard, hay barn, implements and some sheds. Milking parlour and yard sold plus 14 out of 34 of the dairy herd. The business was a proper dairy farming enterprise and employed a full-time worker. Mr Rawlings also transferred most of the remaining animals to a nearby farm owned by his wife, so ceased the milking parlour business and made the worker redundant. He retained and leased the milk quota and used the retained land to rear and finish store cattle.

It was held that the near simultaneous actions taken by Mr Rawlings effectively combined to result in a disposal of the business even though the majority of the land was retained and put to another use. Overall, there was a disposal of the business.

Mr M Gilbert (t/a United Foods) v HMRC - ER allowed

This was won by the taxpayer and the judgement included a useful guide to the test which needs to be passed to show that the sale was of part of the business. Mr Gilbert was a sole trader who was a food distribution business intermediary between manufacturers and suppliers, providing goods to wholesalers. He sold part of his business to one of his suppliers, and what was sold included the customer database relating to the business plus goodwill, trademarks which he had registered relating to two brands who were among his suppliers; the benefit and burden of unperformed contracts; and the records. As a result, his business turnover reduced by 55% and he could of course no longer use the trademarks. He had clearly disposed of a material part of his business.

So, what do you need to do?

Probably the best approach is to come and talk to us before you advance any discussions concerning selling any substantial asset from your business, part of your business or are just considering ceasing trading. The way in which you organise the disposals could significantly alter your tax liability. Hopefully, we can alter it for the better.

Employed v Self-employed – Recent cases

Weight Watchers Limited v HMRC

This case determined that leaders were employees and therefore should be subject to PAYE and Class 1 NIC.

The taxpayer company sold various weight-loss programmes. They were delivered by specially trained former members of the programme, known as “leaders” .

In reaching its decision on the nature of the employment relations between the taxpayer and the leaders, the tribunal applied the three-stage approach

Was there a mutuality of work-related obligation?

The degree of control actually exercised by the hiring party,

That there was nothing else in the terms of the contract that placed it in a different category.

Talentcore

Talentcore, which trades under the name "Team Spirits", is engaged in the supply of individuals to major cosmetic companies for counter and promotional work at airport duty-free shops. It has a database of about 100 individuals, who are referred to as "consultants". In this case the relationship with the Consultants was not one of employment.

In this case:

- 1 Talentcore were free to offer work to them or not, and they were free to accept or decline work when offered.
- 2 There are no written contracts between Talentcore and either the cosmetics companies (or World Duty Free which runs the duty-free shops) or the consultants.
- 3 Talentcore would telephone consultants offering work on particular days in the morning (8am to 2pm) or afternoon (3pm to 9pm) shift. If a consultant accepted, a contract is entered into for such work. A rota is prepared of the names of consultants and sent to the cosmetics company and the consultants. The consultant obtains a signature on his or her timesheet by either someone present from the cosmetics company or a manager from World Duty Free.
- 4 When working there is little supervision of the consultants. There is no control over sales techniques employed by consultants.
- 5 Consultants who are unable or unwilling to work for an agreed slot are expected to inform Talentcore and if possible find a replacement.

The central factor in this case was the right of substitution. The right of substitution is often difficult to establish, particularly where it is contained in the contract but never used. However, the report in Talentcore demonstrates the right was exercised not only in situations of emergency and illness, but also at other times. There was clearly an unfettered right of substitution.

The oft quoted case of Hall v Lorimer includes the famous and true comments:

“In order to decide whether a person carries on business on his own account, it is necessary to consider many different aspects of that person's work activity. This is not a mechanical exercise of running through items on a check list to see whether they are present in, or absent from, a given situation. The object of the exercise is to paint a picture from the accumulation of detail. The overall effect can only be appreciated by standing back from the detailed picture which has been painted, by viewing it from a distance and by making an informed, considered, qualitative appreciation of the whole. It is a matter of evaluation of the overall effect of the detail, which is not necessarily the same as the sum total of the individual details. Not all details are of equal weight or importance in any given situation. The details may also vary in importance from one situation to another. The process involves painting a picture in each individual case.”

Different factors will therefore assume greater or less importance in each case. If you are concerned about the status of your workforce or even yourself, come along and we can advise you. There are a whole raft of factors to be considered.

Come and speak to us if this is something that could affect you.

The 2010 Bribery Act – Is tipping now illegal?

Being an accountant, allegedly, I can often be found reading the content of Accountingweb, an online website for accountants and indeed anyone who cannot sleep at night. I picked out these comments posted after an article on the new Bribery Act.

“It's another nail in the coffin of free enterprise and begs the question why would anyone set up a business in the private sector, what with being an unpaid tax collector with fines for getting a complicated and confusing mess of legislation wrong, Working time Directive, Equality provisions, compulsory pension contributions (is this another tax) coming up, and the myriad of other red tape issues which are too numerous to mention.”

“This new UK madness seems to me to be even more restrictive than corresponding "anti-Bribery" legislation in USA.”

“once again the bureaucrats have failed”

There is now a new crime of failure to prevent bribery, which means organisations will need to demonstrate they have adequate procedures to prevent corrupt practices both internally and by third parties. Failure to do so could expose the business and its senior managers to unlimited fines, debarment from government business or even a jail sentence.

Do I have your attention?

Industries that rely on entertainment and strong inter-personal relationships should look to ensure every instance of corporate entertainment received from a customer, supplier or partner – from a casual coffee with an IT supplier to an invitation to speak at a conference – is rigorously recorded. Information must include not only the time and date of the event, where it occurred and what was received, but also the names of all individuals attending.

So, if you buy someone a coffee in order to gain business, are you breaking the law?

Does this 2010 Act make "tipping" an illegal action by a satisfied diner, who just happens to wish to encourage good service when next visiting that restaurant? You can see where the above comments came from.

Tax tips and tricks....

Capital Allowances on Feed in Tariffs

From 1st April 2012 for companies and 6th April 2012 for individuals, there will be a change to the capital allowances regime for items of plant and machinery that attract a Feed in Tariff (FiT) or tariffs under the Renewable Heat Incentive (RHI).

Finance Bill 2012 will introduce legislation that means expenditure on solar panels will be treated as special rate expenditure from April 2012. However AIA, will still be available for these amounts.

Enhanced Capital Allowances will no longer be available where the plant or machinery generates electricity or heat that attracts payments under the FiT or RHI schemes. Where an ECA is provided, it will be withdrawn if the plant or machinery subsequently receives a payment under either tariff subsequently.

IHT Relief - Give away income and save tax

One of the most overlooked reliefs from Inheritance tax and sometimes the most valuable is the exemption for gifts out of income. Only gifts out of capital are taxable. Therefore, if you have more income than you need, you can give some of it away and potentially save IHT.

By virtue of S21 IHTA 1984, a transfer of value is an exempt transfer if, or to the extent that, it is shown that:

- (i) it represented part of the transferor's normal expenditure; and
- (ii) taking one year with another, it was made out of income; and
- (iii) the transferor was left with sufficient income to maintain his usual standard of living.

It is up to the transferor to demonstrate that he has satisfied all three conditions in connection with any given transfer.

"Normal" is taken to mean habitual and thus requires a pattern of giving to be demonstrated. In relation to this, it can reasonably be argued that the first in a series of life assurance premium payments qualifies. Where there is initially no evidence of any regular commitment, HMRC Inheritance Tax are prepared to accept that expenditure is normal if it occurs three or more times – in such circumstances, the first two payments are also retrospectively eligible for relief.

Striking off Your Company - ESC C16

Legislation is going to be introduced to give statutory effect to ESC C16, the reason being that the Government wishes to reduce the uncertainty faced by shareholders when having their company struck off.

The operative date that has been proposed by the Government for this is 1st March 2012. The legislation is to propose that where a distribution is made by a company prior to its dissolution then it will not be treated as a distribution for the purposes of the Corporation Taxes Act, so long as the total distributions do not exceed £25,000.

The order will treat this type of distribution as a capital distribution and therefore subject to Capital Gains Tax and so attract the CGT Annual Exemption.

Dividends taxed as earnings!

The recent case of PA Holdings Ltd has the potential to become very influential in the way companies pay their director/shareholders. Basically, in that case it was decided that the dividends were to be taxed as earnings and therefore suffer both tax and NIC. Do I have you attention?

This case involved multiple share types and dividend payments on the "alphabet shares" that exactly matched the Bonus that each director was due to get. Yes, it was that blatant.

The leading judge in this case said that PA decided that its employees should receive a bonus, they identified which of the employees should receive a bonus and those employees received a bonus and in his view that was the beginning and end of the case. The bonus was paid in the form of a dividend but that did not matter. It was still a bonus. The taxpayer lost.

HMRC may well take heart from this decision and start to aggressively attack dividend strategies that look like salary with a view to yielding much-needed revenues in the current economic climate and advancing their career prospects.

Many types of remuneration strategy involving dividends that had previously been regarded as legitimate and effective could turn out to be disasters waiting to happen, given that HMRC can seek to reclassify the dividends retrospectively.

Anyone who uses aggressive dividend planning around remuneration would be well advised to review their position at the earliest opportunity.

So, what are the planning issues here? Do you use alphabet shares? Do you take the same dividend every week or month? If you do, then you need to take action.

1. Alphabet shares – until we see the full implications of the PA case, declare the same dividend across each class of share. The dividend must be commercial and based upon profit and not labour or performance.
2. Dividend waivers – does one of your shareholders, perhaps the major shareholder who no longer works full time, waive their dividend allowing others to receive disproportionate dividends on their shares.
3. Same dividends – we have long advocated that weekly or monthly dividends look and smell like salary and should be avoided, and especially if they are identical every time. We have seen these far too often.

Our advice for the right dividend strategy:

1. Pay quarterly – if you cannot manage it immediately, aspire to this payment schedule.
2. Minute a board meeting each time a dividend is to be declared – we can send you a draft minute.
3. Make an assessment of the profitability of the company in that quarter. Simple and rough management accounts will suffice. For the smallest companies you could even just review the company cash flows as shown on the company bank statement. Attach the results to the minute.
4. The dividend should fluctuate to reflect the changing profitability of the company. You can develop a policy on dividends, e.g. a dividend is 50% of the estimated profit before tax, leaving the other 50% to cover the tax and leave some cash in the company for development, i.e. investment.
5. Speak to us if you are in any doubt what to do.