tlp - news

January 2013

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

www.thelongpartnership.co.uk

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Quotes

"A man can get discouraged many times, but he is not a failure until he begins to blame somebody else and stops trying."

John Burroughs, Writer

"There's only one direction you can coast."

Brian Tracy, Author

"You have to believe in yourself, that's the secret. Even when I was in the orphanage, when I was roaming the street trying to find enough to eat, even then I thought of myself as the greatest actor in the world."

Charlie Chaplin, Actor

"The person who pays an ounce of principle for a pound of popularity gets badly cheated."

Ronald Reagan, 40th U.S. president

Welcome to 2013. Where will it take us? **Where will it take you?** We all have a blank sheet of paper in front of us. What shall we write? That is entirely up to you and us. Let's get going.

The Long Partnership began back in 2001 with 2 people, 2 computers and a lot of commitment. The Long Partnership, TLP to our friends, now has a staff of around 30 spread across 5 offices. Did you think it was only 4? It was until recently. We are back in Dingwall! I always liked Dingwall, especially the bakers.

We always try to be on good terms with the other accountants on our patch. Yes, I know we are in competition, but that does not mean we cannot get on. Occasionally we come across other accountants who share our approach and philosophy and with whom we might develop a closer relationship. This is what happened in the second half of 2012. **We started to explore possibilities.** I know you are not supposed to do things like this in a recession. If you listen to the media (and most bankers) you are supposed to curl up in a tight ball in the corner of a darkened room and emit low moaning noises until the "recession" is over. We have never really bought into that school of thinking.

We started to have discussions with Mike Evans at A A Mackenzie & Co in Dingwall and this led to us merging our practices in December. Mike will be running the show in Dingwall but will now get the benefit of all our systems and backup and his clients will now come automatically under our fee protection umbrella and of course, start to receive this newsletter. **To those of you reading this for the first time, Welcome, we are glad to have you on board.**

So, TLP has grown a little bigger but the question then has to be, where are we going? You are assuming there is a game plan here. All we can say is that the answer to that question is probably ... forwards, outside our comfort zone and towards the sun.

When you face the sun, all the shadows are behind you and of course, we never look backwards, only forwards to where the sun is shining, but I'll take my umbrella, just in case.

Now, I am sure there will be some of you who wonder what planet we are on. How can we possibly be telling you to expand and develop your business in the present economic environment.

Trading is tough. Getting paid is tough. HMRC is getting ruthless. Banks offer limited support (I am being diplomatic here). It's a tough business making a living just now. We know.

But when it is so tough, there are opportunities out there that might not be available when things eventually get better and the market becomes more stable. Curling up in a dark corner is not the answer. Leave that to others. You have to join the fight, engage with potential customers and explore whatever opportunities come your way.

You will have gains and losses. There will be the little victories and occasional defeats but hopefully you will avoid a massacre. Will you see the fruits of all your hard work? Possibly, possibly not. But, **whatever the outcome, you will have given it your best shot and learnt a lot along the way, and you will have found opportunities you did not know existed.**

I was listening to a CD in my car a little while back. Someone was promoting the idea that it is never too late to learn. They were suggesting a programme of self development that would take up to 5 years. Now, how many of you might be thinking that a 5 year commitment "at my time of life" is a waste of time? In 5 years time you will be 5 years older anyway. The only decision you can make is what sort of person will you be in 5 years time. What will you know. You are going to get there anyway. Remember that the founder of McDonalds was over 60 when he started. You have no excuse!

We are looking forward to the coming year. There are going to be some tough challenges. There will be bruises and maybe some broken bones but we are ready. Let's get started.

So, this is 2013. You have a clean sheet of paper in front of you. **What are <u>you</u> going to write?**

Forms P11D and P9D Which to use?

Many expenses and benefits must be reported to HMRC on forms P11D and P9D at the end of the tax year.

It's important to choose correctly between forms P11D and P9D for each employee. The form to use depends on the employee's earnings and on whether they're a director of the company, as explained below.

Employees earning £8,500 or more a year - form P11D

Use form P11D to report expenses and benefits provided to an employee earning at a rate of £8,500 or more per year. See below for what to include within the £8,500 threshold.

Employees earning less than £8,500 - form P9D

Use form P9D to report expenses and benefits provided to employees earning at a rate of less than £8,500 per year. See below for what to include within the £8,500 threshold.

What the £8,500 threshold includes

The £8,500 threshold doesn't only include wages or salary that you pay the employee. You must also include the value of the expenses and benefits they receive from you.

The £8,500 operates on a pro rata basis if the employee only works for part of the year. For example, if an employee only works for six months of the year then you'll need to use a form P11D if their earnings in that period are £4,250 or more.

Company directors - usually form P11D

Use form P11D for almost all company directors. Only use form P9D if all of the following apply:

- they earn at a rate of less than £8,500 per year
- they have no material interest in the company - they own or can control less than 5 per cent of its ordinary share capital.
- they are either a full-time working director or a director of a charity or non-profit organisation.

Tax Allowances for Polytunnels

Revised guidance has been issued by HMRC on the availability of Capital Allowances for Polytunnels.

HMRC do not accept that they are automatically plant, because the uses to which polytunnels may be put by businesses are extremely varied.

Which polytunnels may or may not qualify for plant and machinery allowances will depend on the facts of each case, including the exact use in any particular business.

Glasshouses

Most glasshouses are not plant or machinery and will not qualify for capital allowances. However, HMRC do accept that where a glasshouse and its attendant machinery are inter-dependent and form a single entity which functions as plant in a grower's business, the whole will qualify for capital allowances if it meets the criteria set out by HMRC, e.g. it incorporates extensive computer controlled equipment, without which the structure cannot operate to achieve the optimum artificial growing environment for the particular crops involved.

A glasshouse that qualifies as plant is likely to be used for year round growing of high value crops where, without the benefit of a closely controlled environment there would be a restricted growing season.

Polytunnels

A polytunnel is usually a metal framed semicircular tunnel covered in polythene that is used predominantly by the farming and horticulture industry. If a polytunnel is a fixed structure it is excluded from plant or machinery allowances.

The exact use of the polytunnel can vary. If the only use is the provision of shelter for equipment, livestock or stores, it will comprise part of the premises or setting in which the qualifying activity is carried on and hence not qualify for allowances.

HMRC accept that in relation to the growing of plants, a polytunnel does far more than just provide shelter from the elements. It can provide an enhanced growing environment for plants, not only increasing air and soil temperature and humidity, but also extending the crop growing season and protecting plants from insect infestations.

In spite of this, however, their view is that if it is “fixed” and intended to be a permanent structure, it will not qualify for allowances. It must be capable of being moved, perhaps with the crop every few years.

Take your mind off Tax Returns - P11Ds are on the way!

Expenses and dispensations

The P11D is a return of expenses and benefits and all payments made to the employee need to be included, unless covered by a dispensation. It is up to the employee to make a claim on their self-assessment return for any allowable business expenses. Omission of these reimbursed business expenses from the P11D is a common error. Often much time and analysis work is involved in calculating the figure for reimbursed expenses which will not give rise to a tax charge. By applying for a dispensation the amount of work can often be reduced significantly. There are two main benefits:

Where HMRC accept that certain expenses payments are unlikely to give rise to a taxable benefit these can be omitted from the P11D. The dispensation may include agreed round sum allowances, for instance for accommodation and subsistence expenses. From 6 April 2009 employers can, if they wish, use the HMRC benchmark subsistence rates and HMRC will automatically accept them as part of a dispensation arrangement.

Benefits and National insurance

If the employee contracts for the provision of the benefit (rather than the employer contracting for this direct) payment by the employer is deemed to be meeting a ‘pecuniary liability’ of the employee. Inclusion on the P11D is the correct treatment for income tax purposes but for NI the amount of the benefit should be included in the monthly or weekly payroll and both primary and secondary Class 1 NICs are due. The amount subject to income tax needs to be entered in a P11D box that does not attract Class 1A NIC.

If an employer provides a benefit for both private and business use, Class 1A is due on the whole of the cost – not just the element that is private.

Sale of Private Residence – CGT or Trading Income?

The sale of an individual's dwelling house is normally tax free. If it is taxable it generally falls into the Capital Gains Tax regime.

However, depending on the circumstances, HM Revenue & Customs (HMRC) may sometimes contend that the property disposal is a trading transaction with Income Tax treatment taking precedence over CGT treatment.

For the purposes of determining whether transactions constitute trading, HMRC will invariably seek to apply the 'badges of trade'

Badges of trade

'Trade' is defined as including 'any venture in the nature of trade.'

9 badges have been identified and HMRC has issued guidance as follows:

1. Profit-seeking motive
2. The number of transactions
3. The nature of the asset
4. Existence of similar trading transactions or interests
5. Changes to the asset
6. The way the sale was carried out
7. The source of finance
8. Interval of time between purchase and sale
9. Method of acquisition

These badges are intended to provide a common sense guidance allowing a decision to be made based upon an overall impression. Thus the badges of trade should therefore not be used as a definitive checklist.

A Recent Case – The Properties

An actual recent case illustrates the HMRC approach.

House 1 - Sold August 1999. Occupied as residence prior to disposal.

House 2 - Bought May 2000. Occupied May 2000 to June 2003. Sold during 2003.

House 3 - Bought September 2002. Initially uninhabitable with work being carried out to house for the next 2 years. Occupied from April 2004.

House 4 - Bought February 2003. Occupied June 2003 to April 2004. Sold August 2006.

HMRC contended that House 4 was either a trading transaction on which income tax was due or alternatively subject to CGT because it was never their principal private residence and therefore not exempt from CGT.

The taxpayers' claimed that the property was their home, and that no tax charge arose on disposal by reason of private residence relief.

The tribunal weighed up the badges, and concluded that the balance "tipped" towards the disposal of House 4 *not* being a trading transaction or an adventure in the nature of a trade. It was therefore not a clear cut decision.

HMRC then contended that the property never became a 'residence' as it was merely a 'stop gap' until they could move into House 3. However, it was held that in the circumstances, and in view of the fact that House 4 was actually occupied for 9-10 months, it was "more than a stop gap or temporary place of occupation but where they lived, i.e. their residence."

The Lesson

The taxpayers were ultimately successful but the significance of their story lies in the light that it sheds on HMRC's present areas of attack. How many young couples have traded up, building new homes and selling on their previous "home".

We have long warned about the possibility of HMRC treating these as trading transactions. Now we see some evidence that HMRC are taking on some of these cases.

If you think this could affect you, come and speak to us. In any event, always make sure that each house is actually your home and for a material time i.e. at least a year. We would also recommend that you do not "build" more than 3 times in any 10 year period. There are no hard and fast rules to follow here, so if you get into HMRC's radar, it could be an expensive and stressful experience.

The Sales Prevention Department

Let's talk planes and flying. Now, me and Flybe agree to co-exist but it is not a good relationship. It is not really anything to do with the time that Inverness Check-in refused to let me check in because the photo on my passport was not me. It was! It was also 8 years older, I had a beard and was 4 stone heavier. Northlink never complained. Maybe I should just update my photo. They had to get a second opinion. The second opinion said she thought I looked better without the beard.

My problem once again was at Inverness Airport. I regularly "fly" up and down the A9 but this time I needed to let the plane take the strain to get to a meeting. I booked online and checked my baggage allocation - 2 bags in the hold. When I arrived at the airport, I had to pay an extra £10 for the second bag.

Not happy! On returning to my office I re-checked the website - I still think I was allowed 2 bags in the hold. So, time to phone someone even if they were just going to tell me I could not read. I could find no contact details on the website. They appeared to be hiding, nameless, faceless people afraid that someone might phone and ask them something. I had to submit a message through the website and received a message in return saying they would get back to me within 28 days.

6 weeks later I received a lengthy email explaining that I was indeed wrong but offering to refund the whole £10 if I completed the appropriate form and sent it back to them.

Apparently the rules on baggage did change to allow multiple bags but after the date that I travelled. Did someone update the website prematurely? Did they check?

I do not mind being wrong. I am a man. I get used to it. But this response, when it did eventually arrive (late) was condescending and I must admit, taken with the incident itself, made me wish there was another carrier I could use.

I may yet take it back up with them. After all, I did print out the webpage that told me I could take multiple bags. Is it worth it for £10? Probably not.

The Peedie Bits......

Investment Bonds

Investment bonds have become a simple and therefore popular way of investing for the medium to long term. However, before you consider cashing in a bond either in whole or part, consider the effect on:

1. The availability of personal allowances, and
2. The HICBC

When you cash in a bond you will receive a chargeable event certificate from the company showing the gain on which you may be able to claim "top slicing relief", which broadly means you can divide the gain by a number based on the history of the bond and work out the tax on that reduced amount, then multiplying the answer by the same number. If it sound complicated, it is.

In most cases the discounted gain forms part of your basic rate band, the tax is nil and so multiplying the tax of £nil by the number of years is still £nil.

However, in deciding whether you will still have the use of your personal allowances, you have to bring in the whole gain. If the gain is substantial, this could take your income for this purpose to over £100,000 and you lose your personal allowance. The discounted gain is now not in your basic rate band and so you could have a significant tax bill.

If your normal income plus your investment bond gain, exceed £100,000, you will lose your personal allowances.

The same applies to the HICBC which is the clawback of Child benefit where one earner in a household earns more than £50000. In determining if your earnings exceed £50,000, you must take into account the whole gain on your encashed bond.

Did the salesman explain this to you?

Come and speak to us if you think this may affect you.

RTI but no PAYE Scheme?

The operation of PAYE remains the same under RTI. So if an employer is not required by law to complete a 'deductions working sheet' for any employee, the employer will not be required to operate PAYE, so will not be required to operate RTI. In these circumstances, where an employee earns less than the LEL and their income is not required to be reported under PAYE, the individual will be expected to inform DWP of their earnings. As part of the new Universal Credit, DWP will have alternative processes to collect information about income that is not reported through RTI.

If an employer is operating PAYE, they will have to tell HMRC about payments of earnings to all employees through RTI, even where an employee earns less than the LEL. This is a change from the current situation, where employers do not have to maintain a P11 deductions working sheet if someone earns, for example, £20 a month.

Outstanding VAT Returns Campaign

The campaign has just started and is aimed at businesses that have one or more VAT return outstanding.

These businesses are being given an opportunity to get up to date and pay the tax they owe by **28 February 2013 on favourable terms after which HMRC will** not show any leniency on penalties.

Minimising late PAYE penalties

HMRC's Debt Management and Banking Manual instructs HMRC staff that 'where exceptionally you feel the customer's allocation would not be in their best interests, for example because a different debt is about to be enforced, you can suggest to the customer that it would be in their best interests to allocate differently'. What a nice bunch they are.

In the Cory Bros & Co Ltd v Turkish SS Mecca case, it was held that 'when a debtor is making a payment to his creditor he may appropriate the money as he pleases, and the creditor must apply it accordingly. If the debtor does not make any appropriation at the time when he makes the payment, the right of application devolves on the creditor'. So, you can specify at the point of making a payment, to which debt it is to apply.

If an employer pays each month's PAYE a month late, it will incur a penalty for every month. Therefore, where an employer has fallen into arrears, it should try to avoid further penalties by directing that payments are allocated to its current liability, rather than allowing HMRC to set them against previous late months.

That is, you tell HMRC which debt you are paying and they must allocate it as you direct. Therefore in this example, you leave one month's PAYE outstanding and pay all subsequent months on time. You therefore only incur a penalty on the one month paid late, because the rest are on time.

The HICBC Train Wreck

Families with children where one parent earning more than £50,000 a year can opt out of receiving child benefit or can continue to receive it and get drawn into the SA system. **The new charge applies from 7 January**, and anyone wishing to opt out of receiving child benefit for the 2012-13 tax year must have done so by that date.

There are around 700,000 households where one person earns over £60,000 and receive child benefit. Only 150,000 have actually elected to opt out, which means there's still half a million people who haven't opted out. **Therefore half a million new people will be required to complete a Self Assessment tax return for the year ending this April after the new High Income Child Benefit Charge (HICBC) kicks in.**

These are mostly people that haven't been through SA before, so won't be familiar with the system. **Chaos is expected because people don't realise they're caught by this**.

If they think their earnings are going to be over £60,000 then they're almost certainly going to be better off opting out of the system. If they're worried their income might fall, for example if they were going to lose their job, they won't actually be worse off if they opt out, because they can reverse that election at a future point and get back any child benefit that they would have been entitled to. So, it's not something that's irrevocable.

If they're in the borderline area between £50,000 and £60,000 they might want to consider if there's anything they can do to get their income down.

The key ways of doing that are making more gift aid payments, pension contributions, or consider taking a salary sacrifice. You can also "share" out the earnings more evenly with your spouse if you control your own business.